

TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 263.

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THE KNAPP, STOUT & CO. COMPANY, PLAINTIFF IN  
ERROR,

vs.

JOHN McCaffrey.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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FILED APRIL 15, 1899.

(17,369.)

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*a* In the Supreme Court of the United States, December Term,  
A. D. 1899.

THE KNAPP, STOUT & CO. COMPANY, Appellant, }  
vs.  
JOHN MCCAFFREY, Appellee. }

*Assignment of Errors.*

And now the said Knapp, Stout & Co. Company, appellant, comes and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st. The supreme court of the State of Illinois erred in holding that the circuit court of Mercer county, Illinois, had jurisdiction of this suit.

2nd. The supreme court of the State of Illinois erred in holding that the appellate court for the third district of the State of Illinois had jurisdiction to hear and determine the matters in controversy in this suit, and in affirming the decree and order made in this suit by the said appellate court.

3rd. The supreme court of the State of Illinois erred in not holding that the admiralty courts of the United States alone had jurisdiction of this suit, and that neither the circuit court of Mercer county, Illinois, nor the appellate court for the third district of Illinois, nor the supreme court of Illinois had any jurisdiction to hear and determine this suit.

4th. The supreme court of the State of Illinois erred in deciding that a court of equity had jurisdiction to enforce a lien in this suit.

5th. The supreme court of the State of Illinois erred in not deciding that the United States courts of admiralty alone had the power to enforce the lien in this case:

*b* 6th. The supreme court of the State of Illinois erred in directing the circuit court of Mercer county, Illinois, to enter in this suit a decree against the Knapp, Stout & Co. Company for \$3,643.17, or for any amount, as the circuit court of Mercer county, Illinois, had no jurisdiction to hear and determine the matters in controversy in this suit.

And the said Knapp, Stout & Co. Company, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things which it has lost by occasion of the said judgment.

CHAS. P. WISE,  
*Attorney for Appellant.*

*c* UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Illinois,

before you, between The Knapp, Stout & Co. Company, as appellant, and John McCaffrey, as appellee, a manifest error hath happened, to the great damage of the said The Knapp, Stout & Co. Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 17th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES T. JONES.

Allowed by—

JOSEPH N. CARTER,

*Chief Justice Supreme Court of Illinois.*

d

In the Supreme Court of Illinois.

KNAPP, STOUT & COMPANY }

v.

JOHN McCAFFREY. }

Appeal from Second District.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the 17th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 4th day of April, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,

*Clerk of Supreme Court.*

e

UNITED STATES OF AMERICA, ss :

To John McCaffrey, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Knapp, Stout & Co. Company is plaintiff in error and you are de-

fendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph N. Carter, chief justice of the supreme court of the State of Illinois, this 17th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

JOSEPH N. CARTER,

*Chief Justice Supreme Court of Illinois.*

f STATE OF IOWA, } ss:  
Scott County, }

I, E. G. McArthur, sheriff of Scott county, Iowa, hereby certify that — received the within notice for service on the 28th day of March, 1899, and on the 28th day of March, 1899, I served the same upon the within-named John McCaffrey by reading said notice to him personally and by giving him a true copy thereof.

All done in the city of Davenport township, Scott county, Iowa.

E. G. McARTHUR,

*Sheriff of Scott County, Iowa.*

Fees, \$1.50, paid by Weese & McNulty.

STATE OF IOWA, } ss:  
Scott County, }

I, E. G. McArthur, being duly sworn, on oath state that I am the sheriff of the county of Scott, in the State of Iowa; that I, as such sheriff, on the 28th day of March, A. D. 1899, in the city of Davenport, in Scott county, in the State of Iowa, duly served the within notice on John McCaffrey by reading said notice to him personally and by delivering to him a true copy thereof.

And further say not.

E. G. McARTHUR, *Sheriff.*

Subscribed and sworn to before me, the undersigned, a notary public, at Davenport, Iowa, on this 1st day of April, A. D. 1899.

[Notarial Seal of Ignatius Schmidt, Scott Co., Davenport, Iowa.]

IGNATIUS SCHMIDT,

*Notary Public in and for Scott County, Iowa.*

g In the Supreme Court of Illinois.

KNAPP, STOUT & COMPANY }  
v. } Appeal from Second District.  
JOHN MCCAFFREY. }

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the 4th day of April, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing citation and service was lodged in my office, at Springfield, Illinois.



Witness my hand and the seal of said court this 4th day of April,  
A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,

*Clerk of Supreme Court.*

*h* In the Supreme Court of Illinois.

KNAPP, STOUT & COMPANY }

*v.*

JOHN McCaffrey.

} Appeal from Second District.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to 435 (435), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this 4th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,

*Clerk of Supreme Court.*

1 At a supreme court begun and held at Springfield on Tuesday, the first day of February, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Jesse J. Phillips, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the second day of February, A. D. 1898, there *was* filed in the office of the clerk of said court certain transcripts of the record and proceedings of the circuit court of Mercer county and of the appellate court of Illinois, second district; which said transcripts are in the words and figures following, viz:

2

## UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:  
*Mercer County,*

In the Circuit Court, March Term, A. D. 1895.

Pleas before the Honorable Hiram Bigelow, one of the judges of the tenth judicial circuit court of Mercer county, in the State aforesaid, and a term thereof begun and held at the court house, in the city of Aledo, in said county, on the third Monday (being the 18th day) of March, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Present: Honorable Hiram Bigelow, judge of the tenth judicial circuit of the State of Illinois; William McManus, clerk; George B. Morgan, master in chancery; Cyrus E. Dryden, sheriff.

Attest:

WM. McMANUS.

Filed Feb. 2, 1898.

C. MAMER,  
*Clerk of Supreme Court.*

3

JOHN McCAFFREY

*vs.*

SCHULENBURG AND BOECKELER LUMBER Company, a Corporation; Knapp, Stout & Co. Company, a Corporation; Eugene C. Tittman and David Bronson, Assignees of Schulenburg and Boeckler Lumber Company, Insolvent.

No. 1974.  
 To Enforce Lien.

The following is a copy of the summons issued herein:

STATE OF ILLINOIS, } ss:  
*Mercer County,*

The People of the State of Illinois to the sheriff of Mercer county, Greeting:

We command you that you summon Schulenburg and Boeckler Lumber Company, a corporation; Knapp, Stout & Co. Company, a corporation, and Eugene C. Tittman and David Bronson, assignees of Schulenburg and Boeckler Lumber Company, insolvent, if they shall be found in your county, personally to be and appear before the circuit court of said Mercer county on the first day of the next term thereof, to be holden at the court-house, in Aledo, in said Mercer county, on the third Monday of March, 1895, to answer unto

John McCaffrey in his certain bill of complaint — enforce a  
 4 lien filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

[SEAL.] Witness William McManus, clerk of our said circuit court, and the seal thereof, at Aledo, this 19th day of March, A. D. 1895.

WM. McMANUS, *Clerk*.

On the back of said summons is the following endorsement :

STATE OF ILLINOIS, }  
Mercer County, } ss :

I have duly served the within by reading the same to the within-named—I cannot find the within-named defendants in my county—and at the same time delivering to each of them a true copy thereof, this — day of —, 189—.

CYRUS E. DRYDEN, *Sheriff*.

*Sheriff's Fees.*

Return..... 10

CYRUS E. DRYDEN, *Sheriff*.

Filed in the circuit court this 8th day of May, 1895.

WM. McMANUS, *Clerk*.

5 The following is a copy of the publication notice herein.

PEPPER & SCOTT,  
*Complainant's Solicitors.*

*Publication Notice.*

STATE OF ILLINOIS, }  
Mercer County. }

Circuit Court of Mercer County, March Term, A. D. 1895.

JOHN McCAFFREY

vs.

SCHULENBURG AND BOECKELER LUMBER COMPANY, a Corporation; Knapp, Stout & Co. Company, a Corporation, and Eugene C. Titman and David Bronson, Assignees of Schulenburg and Boeckeler Lumber Company, Insolvent.

In chancery. Bill to enforce lien.

Affidavit of the non-residence of Schulenburg and Boeckeler Lumber Company, a corporation; Knapp, Stout & Co., a corporation, and Eugene C. Tittman and David Bronson, assignees of Schulenburg and Boeckeler Lumber Company, insolvent, the defendants above named, having been filed in the office of the clerk of said circuit court of Mercer county, notice is hereby given to the said non-resident defendants that the complainant has filed his bill of complaint in said court, on the chancery side thereof, on the 19th day of February, A. D. 1895, and that a summons thereupon issued out of said court against said defendants, returnable on the third

Monday of March, A. D. 1895, as is by law required, and that said bill is still pending in said court and undetermined :

Now, therefore, unless you, the said Schulenberg and Boeckeler Lumber Company, a corporation ; Knapp, Stout & Co. Company, a corporation, and Eugene C. Titman and David Bronson, assignees of Schulenburg and Boeckeler Company, insolvent, shall personally be and appear before the said circuit court of Mercer county on the first day of the next term thereof, to be holden at the court-house in the city of Aledo, in said county, on the 18th day of March, A. D. 1895, and plead, answer, or demur to the said complainant's bill of complaint, the same and the matters and things therein charged and stated will be taken as confessed and a decree entered against you according to the prayer of said bill.

WILLIAM McMANUS, *Clerk*.

February 19th, A. D. 1895.

The following is a copy of the publisher's certificate, to which the above publication notice is annexed :

*Publisher's Certificate.*

I, Geo. E. Eames, publisher of the Aledo Democrat, a weekly newspaper published at Aledo, Mercer county, Illinois, hereby certify that the annexed notice was published in said newspaper for four consecutive weeks, the first insertion being on the 19th day of February, A. D. 1895, and the last on the 12th day of March, A. D. 1895.

In witness whereof I have hereunto set my hand this 13th day of March, A. D. 1895.

GEO. E. EAMES.

Printer's fees, \$12.00.

Filed this 28th day of March, A. D. 1895.

WM. McMANUS, *Clerk*,  
By CHAS. R. RUTLEDGE, *Deputy*.

The following is a copy of the certificate of mailing notice to non-resident defendant in chancery :

STATE OF ILLINOIS, }  
Mercer County, } ss :

JOHN McCaffrey

vs.

SCHULENBURG & BOECKELER LUMBER COMPANY  
et al.

} In Chancery

I, William McManus, clerk of the circuit court of said county, in the State aforesaid, do hereby certify that on the 20th day of February, A. D. 1895, being within ten days after the first publication of the notice hereunto appended, I sent by mail a copy of said notice

to Schulenburg and Boeckler Lumber Company, St. Louis, Missouri (cor. St. Louis Ave. and Hall St.); to Knapp, Stout & Co. Company, Menomonie, Wisconsin; to Eugene C. Titman, assignee of Schulenburg and Boeckler Lumber Company, insolvent, to St. Louis, Mo., room 805, Wainwright building, and to David Bronson, assignee of the Schulenburg and Boeckler Lumber Company, at Stillwater, Minnesota, in pursuance of section 12 of an act of the General Assembly of the State of Illinois entitled "An act to regulate the practice in courts of chancery," approved March 15, 1872.

Witness my hand and the seal of said court this 20th day of February, A. D. 1895.

WM. McMANUS, *Clerk.*

The following is a copy of the notice appended to said certificate.

PEPPER & SCOTT,  
*Complainant's Solicitors.*

*Publication Notice.*

STATE OF ILLINOIS, }  
*Mercer County.* }

Circuit Court of Mercer County, March Term, A. D. 1895.

JOHN McCaffrey

*vs.*

SCHULENBURG AND BOECKELER LUMBER COMPANY, a Corporation; Knapp, Stout & Co. Company, a Corporation, and Eugene C. Titman and David Bronson, Assignees of Schulenburg and Boeckler Lumber Company, Insolvent. }

9 In chancery. Bill to enforce lien.

Affidavit of the non-residence of Schulenburg and Boeckler Lumber Company, a corporation; Knapp, Stout & Co. Company, and Eugene C. Titman and David Bronson, assignees of Schulenburg and Boeckler Lumber Company, insolvent, the defendants above named, having been filed in the office of the clerk of said circuit court of Mercer county, notice is hereby given to the said non-resident defendants that the complainant has filed his bill of complaint in said court on the chancery side thereof on the 19th day of February, A. D. 1895, and that a summons thereupon issued out of said court against said defendants, returnable on the third Monday of March, A. D. 1895, as is by law required, and that said bill is still pending in said court and undetermined.

Now, therefore, unless you, the said Schulenburg and Boeckler Lumber Company, a corporation; Knapp, Stout & Co., a corporation, and Eugene C. Titman and David Bronson, assignees of Schulenburg and Boeckler Lumber Company, insolvent, shall personally be and appear before the said circuit court of Mercer county

on the first day of the next term thereof, to be holden at the court-house, in the city of Aledo, in said county, on the 18th day of March, A. D. 1895, and plead, answer, or demur to the said complainant's bill of complaint, the same and the matters and things therein charged and stated will be taken as confessed and a decree entered against you according to the prayer of said bill.

WM. McMANUS, *Clerk*.

February 19th, A. D. 1895.

Filed this 20th day of February, 1895.

WM. McMANUS, *Clerk*.

10 The following is a copy of the bill to enforce lien filed herein :

STATE OF ILLINOIS, } ss :  
Mercer County, }

In the Circuit Court, March Term, A. D. 1895.

JOHN MCCAFFREY

vs.

SCHULENBURG AND BOECKLER LUMBER  
Company, a Corporation ; Knapp, Stout  
and Co. Company, a Corporation, and  
Eugene C. Titinan and David Bronson,  
Assignees of Schulenburg and Boeckler  
Lumber Company, Insolvent.

} Bill to Enforce a Lien.

To the honorable judge of the circuit court in and for Mercer county, Illinois, in chancery sitting :

Your orator, John McCaffrey, respectfully represents unto your honor that heretofore, to wit, on April 6, A. D. 1893, he made and entered into a written contract with Schulenburg and Boeckeler Lumber Company, a corporation organized and then and now existing under the laws of the State of Missouri and one of the defendants herein ; which said contract was in words and figures following :

11 This agreement entered into this sixth day of April, A. D. 1893, by and between Schulenburg and Boeckeler Lumber Company, a corporation created, organized and existing under and by virtue of the laws of the State of Missouri and John McCaffrey of Le Claire in the State of Iowa, witnesseth :

That said McCaffrey, for and in consideration of the sale and conveyance to him by said lumber company of three certain steamboats, viz., Helen Schulenburg, Charlotte Boeckeler and Robert Dodds, together with all their tackle, apparel and furniture thereon which sale and conveyance has this day been made for the sum of seventeen thousand five hundred dollars (\$17,500) and the said parties covenant and agree to the following :

First. That the said McCaffrey will receive and tow all of the rafted lumber said lumber company will furnish to him at or below their mill at Stillwater, Minnesota, and tow same to the landing



owned or occupied by the said lumber company at St. Louis in the State of Missouri and there deliver the same to the said lumber company in quantities not exceeding one half a raft at a time (unless said lumber company shall be prepared to receive a larger quantity, in as good order and condition as the same may be received by him at the point where the same is delivered to him for towing. Said McCaffrey shall not be held responsible for any loss or damage to any lumber so delivered to said lumber company for towing which shall be occasioned by the action of the elements or unavoidable accidents, which could not be prevented by the said

12 McCaffrey by the exercise of reasonable diligence.

Second. That when any lumber is delivered to said McCaffrey for towing rafts he will tow the same from the point of said delivery to St. Louis aforesaid, and there deliver the same in quantities as aforesaid without any unnecessary delay and make all reasonable efforts to deliver the same fast enough so as to keep the lumber-pullers of said lumber company in St. Louis aforesaid steadily employed, low water and the elements excepted, and he will do all the work of towing said lumber and delivering the same as aforesaid by and for the following prices and sum that is to say.

Third. For all rafts of lumber delivered to said McCaffrey at Stillwater, Minn., one dollar twelve and one-half cents (\$1.12½) per thousand feet board measure for the lumber contained in such raft, the amount of lumber (other than lumber that may be deck-loaded) to be estimated as four hundred fifty (450) feet board measure for each inch in thickness of rafted lumber in each course of cribs sixteen by thirty-two (16 x 32) feet. Said price of one dollar twelve and one-half cents per thousand feet board measure for the lumber to include all charges for lath, shingles, pickets, grub and coupling plank, or other lumber product which may be loaded except lumber; lumber which is deck-loaded shall be paid for at the rate aforesaid according to the actual scale thereof. It is understood that the said lumber company will not overload the cribs with deck-loading so that the cribs will sink in consequence thereof.

For all rafts of lumber delivered to said McCaffrey for towing pursuant to this agreement, at any point below Stillwater, Minn., a price which shall bear the same proportion to the number of miles from the point of such delivery to St. Louis as the sum of one dollar twelve and one-half cents per thousand feet board measure bears to the number of miles from Stillwater to St. Louis.

It is further understood that said lumber company shall couple the cribs into the sizes of the rafts as said McCaffrey may direct and it is also understood that the said lumber company will use all due diligence to keep this lumber afloat at Stillwater and the rafts shall be fitted up and made ready for the boats.

Said lumber company is to give said McCaffrey the towing of seventy-five million (75,000,000) feet of rafted lumber during the three years first succeeding the date of this contract and further agrees to give said McCaffrey the towing of all lumber which said company may raft to St. Louis that may run over the seventy-five

million feet during the three years first succeeding the date of the contract.

Said McCaffrey shall pay all harbor, wharfage and other charges which may accrue against any lumber delivered to him for towing between the points of such delivery and the points herein specified for the delivery thereof to said lumber company, except in cases where said McCaffrey shall be directed by *by* said lumber company to tie up and leave rafts at points at or near Alton or other places in which case the said lumber company shall pay all the harbor charges on rafts so tied up at the point where said McCaffrey may be so directed to leave same.

That in case of any damage to, or loss of any lumber from any raft delivered to said McCaffrey for towing, pursuant to the  
 14 terms of this agreement, the amount of such damage or loss shall be ascertained and agreed upon at the time of the delivery of the lumber at the landing of said lumber company at St. Louis, Missouri, and such damage for loss or breakage shall be paid for by said McCaffrey at the market price of lumber.

If at any time said McCaffrey shall have any lumber in Alton slough, or at any other point in the vicinity of St. Louis, and shall be unable to deliver the same promptly on being notified so to do by said lumber company, said lumber company may procure any other party or person to tow this lumber from Alton or other points to its landing at St. Louis aforesaid, and shall be entitled to deduct from the price of towing such lumber the sum of sixty dollars (\$60) for each half raft from Alton slough and a sum proportionate per mile as sixty dollars is to the number of miles from Alton slough to St. Louis, from any point above Alton slough.

In the event that said lumber company continues to ship lumber in the raft during the seasons of 1896 and 1897, and give said McCaffrey the towing of an aggregate of one hundred and twenty-five million (125,000,000) feet or over, of rafted lumber during the seasons of 1893 to 1897 inclusive, and at the same price and conditions as in this contract aforesaid, then it is agreed that the said lumber company makes no refund of cash to said McCaffrey, but in the event that said lumber company only continues to ship lumber in the raft during the season of 1896 and discontinues the shipping of  
 15 lumber during the season of 1897, then said lumber company is to pay said McCaffrey the sum of four thousand five hundred dollars (\$4,500). In the event that the said lumber company discontinuing the running of rafts after the season of 1895 then said lumber company is to refund to said McCaffrey the sum of seven thousand dollars (\$7,000).

In view of the fact that George Brasser has been engaged by said lumber company to command the steamer Robert Dodds for the season of 1893, it is agreed that said McCaffrey will assume all liabilities on the part of said lumber company towards said Brasser. Said Brasser is to do the same kind of work that any other first class pilot will do, and shall work as second or head pilot on any boat that said McCaffrey may direct. Said Brasser is to receive sixteen hundred dollars (\$1,600) for the season's work.

Fourth. That all the covenants and agreements of the respective parties hereto herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties respectively, as fully and completely as if such heirs, executors, administrators, successors and assigns had been specifically mentioned in connection with each such covenant.

In witness whereof the parties have hereunto set their hands the day and year first above written.

(Signed)

SCHULENBURG AND BOECKELER  
LUMBER COMPANY.  
JOHN McCAFFREY.

In presence of—

That immediately upon the execution of said contract your orator entered upon the performance thereof and at all times from  
16 thence hitherto has faithfully complied with all the terms and conditions thereof according to the true spirit and intent thereof.

Your orator further represents that while he was engaged in carrying out the provisions of said contract there was delivered to him, on October 13, 1894, at Stillwater, in the State of Minnesota, a raft of lumber containing two hundred and eighty-eight cribs of lumber and deck loading, as follows, to wit:

Two hundred and eighty-eight cribs of lumber containing of lumber.....	3,113,100 feet
And grub plank, for the towing of which under said contract said Schulenburg and Boeckeler Company is liable to pay .....	82,944 feet
Said raft was deck-loaded with timbers.....	113,970 feet
And with loose lumber.....	11,300 feet

Making a total of..... 3,321,314 feet

of lumber, for towing which, according to the terms of said contract, Schulenburg and Boeckeler Lumber Company in and by said contract agreed to pay your orator at the rate of one dollar and twelve and one-half cents (\$1.12½) per thousand feet, and in addition to the above said raft was also deck-loaded with fourteen thousand six hundred and ninety-nine (14,699) bundles of lath, seven thousand nine hundred and seventy-six (7,976) bundles of shingles, and three hundred and seventy-one bundles of pickets.

That immediately upon the said raft and its said deck loading (which will hereinafter be referred to as raft # X) being delivered to him, your orator proceeded, by his agents and employees,  
17 to tow the same to the landing of said Schulenburg and Boeckeler Lumber Company in St. Louis, Missouri; that the actual work of towing was done by a steamboat of more than five tons burden, owned by your orator and known and called by the name Robert Dodds; said steamboat was handled and managed and the actual possession of said raft taken by a crew employed and

controlled by your orator, one George Tromley, Junior, of Le Claire Iowa, being employ- by your orator as captain of said boat and crew, and said Tromley acted as captain thereof from the time said raft was delivered to your orator, as above mentioned, untol said boat was finally attached to and left with the half of said raft which now remains in Boston bay, in Mercer county, Illinois, as hereinafter described, on November 4th, 1894; and during all that time said Tromley and said crew acted as the agents and employees of your orator in running said steamboat and in receiving and towing said raft.

Your orator further represents that during the latter half of October and the first half of November, in the year 1894, the water in the Mississippi river, down which said raft had to be towed from Stillwater, Minnesota, to St. Louis, Missouri, was at a very low stage, and this fact made navigation of said river and the towing of rafts therein slow and difficult; that on or about October 23rd, 1894, your orator was at Le Claire, Iowa, on the west bank of the Mississippi river, where he then had a place of business; that on or about that day he received a communication from Schulenburg and

Boeckeler Lumber Company telling him that it wanted half  
18 of the raft # X at its landing in St. Louis, Missouri, as soon as he could by any possible means get it there, and requesting him to divide the raft for the purpose of making better time, and bring one half of it to said landing as quickly as possible; that at that time said steamboat, Robert Dodds, with said raft in tow, had not yet reached Le Claire, Iowa, but did so on the following day; that your orator then communicated said request to the captain of said steamboat and directed him to tow the entire raft to Boston bay, in Mercer county, in the State of Illinois, and there divide the raft—tie one half to the shore and employ a man to watch it, and then proceed with all possible speed to tow the other half of said raft to said landing; that said bay is the first place south of Le Claire, Iowa, suitable or safe for leaving a raft tied up to the shore in the waters of the Mississippi river or in waters opening into that river.

That accordingly said raft was towed into said Boston bay by said steamboat and there divided into halves on October 26th, 1894. One-half thereof was then by the crew of said steamboat attached to the shore with lines belonging to your orator, and said Tromley, acting for your orator, employed a man to watch and guard said half raft as custodian thereof for your orator until the said steamboat should return to said half raft, and said half raft has so remained from thence hitherto and still remains in Boston bay, in Mercer county, Illinois, attached to the shore by the lines the property of your orator, and will be hereinafter referred to as half raft # 1.

19 That said steamboat immediately then proceeded with the other half of said raft—which will be hereinafter referred to as half raft # 2—in tow toward said landing in St. Louis, Missouri, and on the succeeding day, or the succeeding day but one, your orator at Le Claire, Iowa, received by wire a request or order from

said Schulenburg and Boeckeler Lumber Company to tow the half raft # 2 into Quincy bay, in the State of Illinois, and leave it there until the succeeding spring. This order your orator at once communicated to said Tromley, and directed him to comply therewith. Said Tromley accordingly left the Mississippi river with said steamboat and half raft # 2 in tow and towed the same a safe distance into Quincy bay, and proceeded to make the same fast to the shore. On the day he was engaged in doing this, Schulenburg and Boeckeler Lumber Company again communicated with your orator by wire at Le Claire, Iowa, and requested him to bring half raft # 2 with all possible speed to its landing in St. Louis, Missouri. This request your orator immediately communicated to said Tromley, and ordered him to comply therewith. Said Tromley accordingly took said steamboat and towed half raft # 2 to the said landing in St. Louis, Missouri, and there delivered the same to Schulenburg and Boeckeler Lumber Company on November 2nd, 1894. Said Tromley with said crew and steamboat then at once returned to the half raft # 1 in Boston bay and attached said steamboat to said half raft # 1 with lines of your orator, and the said boat has remained so attached to half raft # 1 from thence hitherto; that said

20 half raft # 1 had during the time said boat was absent from it been and at all times since has been in the possession of your orator, held and controlled by his lines; that when said boat was again attached to the half raft # 1 your orator employed a man to watch and guard said raft, and said raft has been in the actual care, custody, and possession of an employé of your orator from thence hitherto, and in the care and custody, possession and control of your orator from October 13th, 1894, to the present time, and so remains, and that during all that time no one other than your orator and his employees has ever been in possession or attempted or sought to take possession of half raft # 1.

That in towing rafts from the pineries of the north to the St. Louis, Missouri, market it has for years been customary to tow entire rafts to Alton slough, which is a safe harbor for rafts, distant about twenty miles from St. Louis, Missouri, and there make them fast to the shore until such time as the owner of the lumber in them contained may desire to use the same or any part thereof; that this custom was well known to your orator and said Schulenburg and Boeckeler Lumber Company when said contract was made and said contract in view thereof and with the understanding that your orator should act thereon.

Your orator further represents that to divide raft # X at Boston bay and to hasten south with one-half only thereof and to tow half raft # 2 into Quincy bay a safe distance, make same fast for the winter, and then tow same out again to the Mississippi river was a source of great trouble, inconvenience, and expense to your orator; that the actual expense of taking the raft to St. Louis, Missouri, in that way would exceed the expense of taking it by the usual method—that is, towing the entire raft to Alton slough and there divide it in half and taking it into St. Louis, one-half at a time as required—at least two hundred dollars, all of

which was well known to said Schulenburg and Boeckeler Lumber Company when it requested that the raft be divided on or about October 23rd, 1894, for the purpose of making greater speed with one-half thereof and when it requested that half raft # 2 be laid up in Quincy bay, and then, as soon as that was done, requested that it be at once brought to St. Louis, Missouri.

Your orator further represents that while no particular amount was fixed which Schulenburg and Boeckeler Lumber Company was to pay over and above the regular contract price for towing said raft # X and said half raft # 2 by the method it directed, as above set forth, it was understood and agreed that it would pay to your orator over and above the contract price whatever it was reasonably worth to tow raft # X and half raft # 2 by the method it requested over and above what it was worth to tow said raft # X by the usual method, and your orator represents that it was reasonably worth the sum of two hundred dollars to tow the raft # X and half raft # 2 by the method they were towed, in accordance with the request of Schulenburg and Boeckeler Lumber Company, than to tow them by the method customarily pursued by your orator and contemplated by the parties to said contract at the time the same was entered into.

22 Your orator further represents that by tying up and leaving half raft # 1 in Boston bay and by tying up half raft # 2 in Quincy bay, in accordance with the directions of Schulenburg and Boeckeler Lumber Company, your orator has become personally liable for a large amount of harbor charges, both at Boston bay and Quincy bay, the exact amount of which is to your orator unknown, but which your orator is informed and believes will amount to one hundred and fifty dollars, a part of which your orator has already paid.

Your orator further represents that on or about November 8th, 1894, said Schulenburg and Boeckeler Lumber Company, being then insolvent, made a voluntary assignment at St. Louis, Missouri, to Eugene C. Titman and at Stillwater, Minnesota, to David Bronson; that your orator first learned of such assignment on or about November 12th, 1894, and went at once to St. Louis, Missouri, where he called in said Schulenburg and Boeckeler Lumber Company, presented to it his claim for towing raft # X and for charges thereon, and told it that he was ready and willing and offered at once to tow half raft # 1 to its landing in St. Louis, Missouri, and further told Schulenburg and Boeckeler Lumber Company that he held half raft # 1 for the entire claim and charges last mentioned. Your orator was informed, however, by said corporation that neither it nor its assignees had anything to do with said raft # 1, and that said Schulenburg and Boeckeler Lumber Company did not desire that he tow half raft # 1 to its landing in St. Louis, Missouri, and directed your orator that, so far as it was concerned, he should do nothing further with half raft # 1, and informed him that previous to making the assignment and on or about November 6th, 1894, it had sold half raft # 1 to Knapp, Stout and Co. Company and directed him to call on that company, which was the first information your orator had that



23 it was claimed that said half raft # 1 had been sold. Your orator then called upon Knapp, Stout & Co. Company, which is a corporation organized and then and now existing under the laws of the State of Wisconsin, with its principal place of business at Menomonie, in the State of Wisconsin, and advised its manager that he was in possession of half raft # 1, which he held for the entire sum due him for towing raft # X and for charges incurred on said raft, and that he was ready and willing forthwith to tow half raft # 1 to the landing of Schulenburg and Boeckeler Lumber Company in St. Louis, Missouri, and there deliver it to whoever it might direct upon payment of the sum last mentioned; that said manager thereupon made an assault upon your orator, attempted to strike your orator with a heavy office chair, used toward your orator language the most vile and opprobrious, informed your orator that your orator was not lawfully in possession of and had no right to the possession of half raft # 1, and in the name of Knapp, Stout and Co. Company forbade your orator to move half raft # 1 or to tow the same to St. Louis, Missouri, or any place else, and told your orator that Knapp, Stout and Co. Company did not want him to tow half raft # 1 to St. Louis, Missouri, and did not want him to touch it, but did want him to release and deliver up to Knapp, Stout and Co. Company where it then was, in Boston bay, and further told your orator that if he did not do so that Knapp, Stout and Co. Company would take the same away from him.

24 Your orator further represents that half raft # 1 has never been delivered to Knapp, Stout and Co. Company, and Knapp, Stout and Co. Company up to the present time have never attempted to take possession thereof, and your orator is not able to state and does not know whether any sale has actually been made of half raft # 1 to Knapp, Stout and Co. Company by Schulenburg and Boeckeler Lumber Company or any one else.

Your orator further represents and claims that he has a lien on half raft # 1, including the lumber, timbers, lath, shingles, and pickets thereon, for the amount due as follows:

For towing 3,321,314 feet of lumber, at \$1.12½ per M...	\$3,736.48
For compensation for complying with directions in dividing raft, etc., as set forth above.....	200.00
Harbor charges .....	150.00
Total .....	\$4,086.48

and interest as hereinafter mentioned, and that said half raft, with the lumber, timbers, shingles, lath, and pickets deck-loaded thereon, is liable for the payment of the entire amount of four thousand eighty-six &  $\frac{48}{100}$  dollars (\$4,086.48) which is now due your orator, with interest, at five per cent. per annum, from November 2nd, 1894, on all of said sum (except the harbor charges), and your orator has a first lien thereon for the collection thereof.

That half raft # 1 contains one hundred and forty-four cribs of lumber, which contain a little less than half of raft # X by the thousand feet, but do contain 1,617,698 feet of lumber, including

timbers and loose lumber; that on half raft #1 there is of  
25 shingles 3,769 bundles, of lath 7,362 bundles, and of pickets  
168 bundles.

Your orator further represents that he had frequently applied to said Schulenburg and Boeckeler Lumber Company and to its assignees for payment of the amount so due to your orator, but they and each of them have hitherto wholly neglected and failed to pay the same or any part thereof.

Your orator further represents that he is informed and believes that the assets of Schulenburg and Boeckeler Lumber Company will only pay a small percentage, less than fifty per cent., of its general liabilities, and is further informed and believes that in making such assignment it preferred certain of its creditors to the amount of about two hundred thousand dollars, and that for that reason said assignment will not be recognized as valid or binding in the State of Illinois.

Your orator further represents that Knapp, Stout and Co. Company have the control of several steamboats and a large force of men navigating the Mississippi river north from St. Louis, Missouri, during the season of navigation; that your orator is informed by several men who have been in conversation with the agents and employees of said Knapp, Stout and Co. Company, and your orator firmly believes from this information and from the threat made to him personally by the manager of Knapp, Stout and Co. Company, that as soon as navigation opens in the spring of 1895 it will with a large force of men and such boats as are necessary to take forcible possession of half raft # 1, and by force and arms deprive your orator of the possession thereof. Your orator further represents

26 that half raft # 1 is now attached to the shore within two hundred yards of the open channel of the Mississippi river, at a place easy of access for steamboats even at low water, and it would be ruinous financially to your orator for your orator to keep a force of men to large enough to defend his possession of said half raft against said Knapp, Stout & Co. Company, guarding the same from the time navigation opens in the spring of 1895 until this suit is determined, and your orator is convinced that if said Knapp, Stout & Co. Company succeed in depriving your orator of the possession of half raft # 1 by force that your orator will never realize anything on the claim above set forth except such pittance as may be paid to the unpreferred, unsecured creditors of Schulenburg and Boeckeler Lumber Company.

Your orator further represents that half raft # 1 should be moved higher to what is called the June rise in the Mississippi river, which occurred about June 1st of each year, because in its present position it is so near the channel of the river that it would be in great danger of being torn to pieces, destroyed, lost, and being carried away by the high waters. Prudence requires that it should be moved further inland where it may find safe harborage, and your orator is advised that his right to move said raft # 1 from its present mooring is doubtful, and your orator represents that he should not be held and made responsible for the safe keeping of the same. Your orator

further represents that since Oct. 26th, 1894, until navigation closed he was ready and willing to have and would long since have towed said half raft to the landing of said insolvent company in St. Louis,

Missouri, and there delivered the same to whoever said insolvent company directed upon payment of the sum due him as aforesaid had he not been forbidden so to do and prevented from so doing by Schulenburg and Boeckeler Lumber Company and by Knapp, Stout and Co. Company, to whom said insolvent company pretended to have sold the same.

Forasmuch, therefore, as your orator is without remedy save in a court of equity, and to the end that the said Schulenburg and Boeckeler Lumber Company, a corporation; Knapp, Stout and Co. Company, a corporation, and David Bronson and Eugene C. Titman, assignees of Schulenburg and Boeckeler Lumber Company, insolvent, who are hereby made parties to this bill, may be required to make full and direct answer to the same, but not under oath, their oaths to their answers being hereby expressly waived, and that your orator may be decreed to have a first lien upon said half raft #1 and the material deck-loaded thereon for the amount due him as aforesaid, and that the defendants may be decreed to pay to your orator the amount so due him with interest and costs by an early day to be fixed by the court, and that in default of such payment said half raft with the material deck-loaded thereon, or so much thereof as may be necessary, shall be sold by such officer of the court and in such manner as the court shall direct to satisfy the amount then due your orator and costs, and in case of such sale the purchaser or purchasers shall have an absolute title to such property free from all equity of redemption and all claims of any kind by or on the part of any of said defendants, and that defendants and all persons claiming through or under them subsequent to the beginning of this suit may be barred of any right to or interest in

such portion of such property as may be sold pursuant to the decree of this court, and that your orator may have such other and further relief in the premises, both of a general and special nature, as to equity may appertain and to your honor may seem meet.

May it please your honor to grant the writ of summons in chancery directed to the sheriff of Mercer county, commanding him that he summon the defendants, Schulenburg and Boeckeler Lumber Company, Knapp, Stout and Co. Company, a corporation, and Eugene C. Titman and David Bronson, assignees of Schulenburg and Boeckeler Lumber Company, insolvent, to be and appear before the said court on the first Monday of the next March term thereof, to be held at the court-house in Aledo, Illinois, on the third Monday in March, A. D. 1895, then and there to answer this bill.

JOHN McCAFFREY.

By PEPPER & SCOTT,

*His Solicitors.*

STATE OF IOWA, }  
 Scott County, } ss :

John McCaffrey, being duly sworn, upon oath says that he is the complainant in the above and foregoing bill, that he has read the same, and that it is true in substance and in fact.

JOHN McCaffrey.

29 Subscribed and sworn to before me the 16th day of Feb.,  
 A. D. 1895.

[SEAL.]

AUG. A. BALLAFF,  
 Clerk District Court, Scott Co., Iowa.

Filed in the circuit court this 19th day of Feb., A. D. 1895.

WM. McMANUS, Clerk.

The following is a copy of the affidavit of non-residence filed herein :

STATE OF IOWA, }  
 Scott County, } ss :

JOHN McCaffrey, Complainant,  
 vs.

SCHULENBURG AND BOECKELER LUMBER COMPANY, a Corpora-  
 tion ; Knapp, Stout & Co. Company, a Corporation, and Eugene  
 C. Titman and David Bronson, Assignees of Schulenburg and  
 Boeckeler Lumber Company, Insolvent, Defendants. }

John McCaffrey, being first duly sworn, says that he is complain-  
 ant in above-entitled cause ; that each and all of the defend-  
 30 ants in said cause, all of whom are above named, are  
 non-residents of the State of Illinois ; that the place of  
 business, place of residence, and post-office address of Schulenburg  
 and Boeckeler Lumber Company is corner of St. Louis Ave. and  
 Hall street, St. Louis, Missouri ; that the place of business, place  
 of residence, and post-office address of Knapp, Stout and Co. Company  
 is Menomonie, State of Wisconsin ; that the place of residence and  
 post-office address of Eugene C. Titman, assignee of Schulenburg  
 and Boeckeler Lumber Company, insolvent, is room 805 Wain-  
 wright bldg., St. Louis, Missouri, and the place of residence and  
 post-office address of David Bronson, assignee of Schulenburg and  
 Boeckeler Lumber Company, insolvent, is Stillwater, Minnesota.

Further affiant sayeth not.

JOHN McCaffrey.

Subscribed and sworn to before me the 16th day of Feb., A. D.  
 1895.

[SEAL.]

AUG. A. BALLUFF,  
 Clerk District Court, Scott Co., Iowa.

Filed in the circuit court this 19th day of Feb., A. D. 1895.

WM. McMANUS, Clerk.

- 31 The following is a copy of the motion for receiver filed herein :

STATE OF ILLINOIS, } ss :  
*Mercer County,*

In the Circuit Court, March Term, 1895.

JOHN McCaffrey

vs.

SCHULENBURG AND BOECKELER LUMBER COMPANY ET AL. }

Now comes the complainant, by his solicitors, and moves the court to appoint a receiver of the property described in the bill herein as half raft # 1, to hold the same pending the determination of this suit.

JOHN McCaffrey.

By PEPPER & SCOTT,  
*His Solicitors.*

Filed in the circuit court of Mercer county this 18th day of March, 1895.

WM. McMANUS, *Clerk.*

- 32 The following is a copy of the objections to the appointment of receiver and cross-motion of Knapp, Stout and Co. Company filed herein :

STATE OF ILLINOIS, } ss :  
*County of Mercer,*

In the Circuit Court, March Term, A. D. 1895.

JOHN McCaffrey

vs.

THE SCHULENBURG & BOECKELER LUMBER Company, The Knapp, Stout & Co. Company, E. C. Titman, Assignee, *et al.* } Petition for Lien.  
 In Chancery.

And now comes the defendant The Knapp, Stout & Co. Company, and appearing for the purposes of this motion only and expressly limiting its appearance to such purpose and in nowise entering its general appearance herein or admitting that this court has jurisdiction over it of the subject-matter in controversy in said suit, to wit, the raft mentioned in bill of complaint, but protesting that this court has no jurisdiction thereof, objects to this court appointing any receiver for said raft & lumber, etc., mentioned in complainant's bill, moves the court to require the said complainant, John McCaffrey, if he shall continue to claim a lien upon said raft and to claim the possession thereof, to file in this court

33 a good and sufficient bond in the sum of at least \$25,000.00, with good and sufficient sureties to be approved by this court or the clerk thereof as the court may direct; which said bond

shall be conditioned that the said John McCaffrey shall pay unto the said Knapp, Stout & Co. Company whatever damage it may suffer as the owner of said raft so sought to be held under the claim of said lien by said McCaffrey in case this court or any other court shall decide either that it has not jurisdiction hereof or that said McCaffrey has no lien and no right to hold said raft, and for reasons why this motion should be granted this defendant says:

1st. That it appears from the petition filed by said McCaffrey that said raft is in great danger of being destroyed by the elements if allowed to remain where it now is.

2nd. That this defendant believes that the said McCaffrey has not sufficient means to pay its damages in case said raft should be destroyed and upon hearing of this case it shall appear or be decreed that he has no lien upon said raft; that said raft was of the value of at least \$17,000.00, and that said McCaffrey's so-called lien is less than \$5,000; so that over and above any claim and lien said McCaffrey has or may claim this defendant has an interest of at least \$12,000 in said raft, and that this interest should be fully protected.

3rd. That this defendant, The Knapp, Stout & Co. Company, paid \$15,000 for said raft in absolute ignorance of any claim the said McCaffrey might have for any lien, and after being informed by the owners of said raft that said McCaffrey had no lien on said raft and was not in possession of said raft.

34 4th. That said McCaffrey at the time this defendant paid said \$15,000.00 was not in possession of said raft, but the possession of said raft was held by the Schulenburg & Boeckler Lumber Company, through their agent, at New Boston, Illinois, and that said agent turned over the possession of said raft to this defendant, and that this defendant has held the exclusive and only possession of said raft ever since it purchased the same, and that said alleged McCaffrey's possession is pretended, unfair, and concocted; that he has no actual possession, but that he has a boat tied to said raft, and has threatened and still threatens to refuse to allow this defendant to take possession of said raft or remove the same, and thereby it is liable to suffer great damage.

And this defendant further prays that if this court shall order, as prayed for in this motion, that McCaffrey give security, that it require him to do so within a reasonable time, and that if he fails so to do, then that this defendant shall have a right to take possession of said raft and remove the same to St. Louis, Missouri; and this defendant, in order that this court may grant such an order, is willing to enter into a bond in the sum of \$5,000.00 or \$6,000.00, to be approved, etc., as may be ordered by this court, to pay to said McCaffrey the amount of any lien that may be decreed in his favor in this suit against said raft and all costs of this suit if said McCaffrey is decreed herein to have a lien against said raft; and the defendant, being in a court of equity and believing that it is but right that this motion should be granted, prays the court to grant the same.



And defendant shows to the court that its above prayer  
35 should be granted for the reasons above stated, and the  
prayer for a receiver made herein by complainant should be  
denied for the following reasons:

1st. This defendant is perfectly solvent and able to pay any decree that may be rendered against it.

2nd. This defendant is and always has been since its purchase in possession of said raft, and the complainant is not now and has not been since October, 1894, in possession of said raft or any part thereof.

3rd. That this defendant, over and above any claim that complainant may have or claim, has an interest in said raft more than double the alleged interest of complainant.

4th. This defendant is ready to give a good and sufficient bond to indemnify said complainant from any loss and pay any decree that may be rendered against said raft or in his favor as having a lien thereon in this suit.

5th. That the expense of receivership would come out of this defendant, and it is unjust and unfair to defendant to so order.

6th. That the complainant is a non-resident of this State, has virtually ties up and attached over \$17,000.00 worth of property of defendant's without any bond being given or taking any steps to save defendant harmless, and before he is allowed to take any steps in this matter this court should require him to give a bond as above prayed for.

And for these and other reasons shown in affidavits this defendant asks that the application for a receiver be denied.

THE KNAPP, STOUT & CO.  
COMPANY,

By BASSETT & BASSETT &  
WISE & McNULTY,

*Its Solicitors.*

36 Filed in the circuit court this 2nd day of April, A. D. 1895.  
WM. McMANUS, *Clerk.*

The following is a copy of the bond of Knapp, Stout & Co. Company filed herein:

Know all men by these presents that we, The Knapp, Stout & Co. Company, of Menomonee, in the State of Wisconsin, and Charles G. Slocumb, of the county of Mercer and State of Illinois, & Isaac N. Bassett, of the county of Mercer & State of Ill., are held and firmly bound unto John McCaffrey, of the county of Scott and State of Iowa, in the penal sum of six thousand (6,000) dollars, to be paid unto the said John McCaffrey, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, the said Knapp, Stout & Co. Company binds itself, its successors and assigns, and the said Charles G. Slocumb and Isaac N. Bassett bind themselves, their heirs, executors, and administrators, and every of them, firmly by these presents.

Sealed with our seals this tenth day of April, A. D. 1895.

Whereas the said John McCaffrey has brought suit in the circuit court of Mercer county, Illinois, against Schulenburg & Boeckler Lumber Company, a corporation; Knapp, Stout & Co. Company, a corporation, and Eugene C. Titman and David Bronson, assignees of the Schulenburg & Boeckeler Lumber Company, insolvents, claiming that he is entitled to a lien on a half raft (called in said suit half raft # 1) and the lumber, shingles, laths, and pickets on said raft, which raft is now in Boston bay, in Mercer county, Illinois, and in said suit is endeavoring to establish and enforce his claim for a lien on said half raft and the shingles, etc., on the same, and the Knapp, Stout & Co. Company claim to be owners and in possession of said half raft, lumber, etc., and that as against the said Knapp, Stout & Co. Company the said John McCaffrey has no lien on said half raft and the shingles, etc., on the same:

Now, the condition of the above obligation is such that if the Knapp, Stout & Co. Company shall well and truly pay or cause to be paid to John McCaffrey all the sums of money for which he has or had at the time the said suit was instituted a lien as against said Knapp, Stout & Co. Company on said half raft # 1 and the shingles, etc., thereon, whether such lien be established in said cause now pending in the circuit court of Mercer county, Illinois, or in any other suit to which Knapp, Stout & Co. Company may be defendant or in a suit in this bond, and shall well and truly satisfy and pay all such costs as may be adjudged against Knapp, Stout & Co. Company in said cause now pending in the circuit court of Mercer county, Illinois, or in any other suit which John McCaffrey may bring against Knapp, Stout & Co. Company or on this bond for the collection of the amount for which the complainant, John McCaffrey, shall have been adjudged by the court in said suit or suits to have a lien upon said half raft # 1 and the shingles, etc., thereon against said Knapp, Stout & Co. Company, then this obligation to be void; otherwise to remain in full force and virtue.

THE KNAPP, STOUT & CO. COMPANY.  
By JOHN H. DOUGLASS, *Treas.* [SEAL]  
ISAAC N. BASSETT. [SEAL]  
CHARLES G. SLOCUMB. [SEAL]

Filed in the circuit court and approved this 13th day of April, A. D. 1895.

WM. McMANUS, *Clerk.*

The following is a copy of the answer of the Schulenburg and Boeckeler Lumber Company filed herein:

STATE OF ILLINOIS, } ss:  
 County of Mercer, }

In the Circuit Court, to the August Term, A. D. 1895.

39

JOHN McCaffrey

vs.

THE SCHULENBURG & BOECKELER LUMBER  
 Company, Knapp, Stout & Co. Company,  
 David Bronson and Eugene C. Titman,  
 Assignees of the Schulenburg & Boeckeler  
 Lumber Company.

In Chancery. Bill to  
 Enforce a Lien.

The answer of The Schulenburg and Boeckeler Lumber Company, one of the defendants, to the bill of complaint of John McCaffrey, complainant.

This defendant, protesting and insisting that it should not be required to answer the complainant's bill of complaint, because this court has no jurisdiction of the subject-matter of this suit, for the reason that the matter in controversy is a matter of which the United States admiralty have sole and exclusive jurisdiction, and this court has no jurisdiction to decree a lien as is prayed for in the complainant's bill, and this defendant, although hereinafter answering the bill filed in this suit, does not thereby waive or intend to waive the right on the hearing hereof to claim and insist that this court has no jurisdiction, as above stated—this defendant, now and at all times hereinafter saving to itself all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto or to so much or such parts

thereof as this defendant is advised it is or are material or  
 40 necessary for it to make answer unto, answering, says: This defendant admits that it is a corporation organized and existing under the laws of the State of Missouri, as is alleged in complainant's bill.

This defendant, further answering, says that it cannot say if the contract set forth in complainant's bill is an exact copy in words and figures of the contract between this defendant and said complainant, as is alleged in complainant's bill. There was a contract made between this defendant and the said John McCaffrey about the matters and things contained in said contract, and this defendant thinks that substantially said contract may be correct, but, not having the original contract at present, this defendant cannot say that the contract set forth in complainant's bill is an exact copy in words and figures of the original contract, and requires the complainant to prove the same.

This defendant, further answering, says that it admits that upon the execution of the contract between the complainant and this defendant the said complainant immediately started in upon the performance thereof, but it denies that the said complainant has faithfully complied with the terms and conditions thereof accord-

ing to the true spirit and intent of said contract, but this defendant avers that the said complainant has in many respects violated the said contract, causing this defendant much loss and damage.

This defendant, further answering, admits that on or about the 13th day of October, 1894, at Stillwater, in the State of Minnesota, a raft of lumber was delivered by this defendant to the said complainant, but this defendant cannot state positively if the said raft

41 contained 3,321,314 feet, as is alleged in complainant's bill, but this defendant knows that the amount of grub plank which complainant states was in said raft — 82,944 feet; that for that he was to receive no compensation, and this defendant was not to pay for the towage of said grub plank at the rate of \$1.12½ per 1,000 feet, as is alleged in complainant's bill, nor was this defendant by the contract which was entered into by and between this defendant and the said complainant to pay anything for the towage of top-loading of the raft, consisting of shingles, laths, and pickets.

This defendant admits that soon after the said raft and its deck-loading, which in said bill is designated as raft No. 10, was delivered by this defendant to the complainant that the said complainant proceeded to tow said raft by the steamer Robert Dodds; that this defendant supposes the captain and crew of said boat were the employees of the complainant, and this defendant admits that the captain of said boat was named one George Tromley, Jr., but can't say if he is from Le Claire, Iowa, but preumes or supposes he is, but this defendant does not know how long said Captain Tromley remained captain of said boat or whether he was captain of said boat when said boat remained in Boston bay, in Mercer county, Illinois, on or about November 4th, 1894, and requires the complainant to prove the same.

This defendant admits that during the latter half of October or the first half of November, in the year 1894, the water in the Mississippi river, down which said raft had to be towed from Stillwater, Minnesota, to St. Louis, Missouri, was in a low stage, and this fact made navigation of said river and towing of said rafts therein slow and difficult.

42 This defendant admits that on or about the 23rd of October, 1894, as is alleged in complainant's bill, this defendant ordered or instructed the said complainant to bring half of the raft called No. 10 to its landing in St. Louis, Missouri, as soon as he could possible bring it there, as this defendant then wanted the lumber, and this defendant requested the complainant to divide the raft for the purpose of making better time.

This defendant, further answering, says that it does not recollect whether it gave the complainant specific instructions to take said raft to Boston bay in order to divide the same, but that it always — the understanding and custom to take it to that place and have it divided when the instructions were given to the complainant where they were given, and that the complainant did take said raft to Boston bay and divide the same, this defendant admits, but what

instructions the said complainant gave to said Captain Tromley this defendant does not know.

This defendant, further answering, says that it was the distinct understanding between the complainant and this defendant that as soon as any raft was towed into Boston bay that it was to be delivered to the agent and employé of this defendant, Edward L. Willets, and that said raft when it arrived in Boston bay and was divided the half raft that was left there was immediately delivered to the agent and employé of this defendant, Edward L. Willets, as watchman, to take charge and custody of and watch the same. This defendant does not know what instruction the said complainant gave to the captain of said boat, Tromley, about employing a watchman to watch the raft he left there, and then proceed with all possible speed with the other half raft to St. Louis, but this defendant does know that this defendant had instructed its watchman to take charge of the half raft left in Boston bay, and it was delivered by said Captain Tromley to said watchman, who held the possession of the same for this defendant.

This defendant denied that said complainant employed a man to guard and watch said half raft as custodian thereof for the complainant until the said steamboat should return to said half raft; denies that said half raft so remained from thence hitherto and still remains in Boston bay attached to the shore by the lines the property of the complainant, but, as the defendant has previously stated, the possession of the said raft was delivered by the complainant to its servant and watchman, one Edward L. Willets, and he immediately took possession of the same.

This defendant, further answering, admits that the complainant proceeded from Boston bay with the half raft towards St. Louis, but this defendant is not certain whether it afterwards gave the complainant an order to take said half raft into Quincy bay, and requires the complainant to prove the same.

This defendant knows nothing about the complainant communicating such an order to the Captain Tromley, as is alleged in the complainant's bill, or whether Captain Tromley did tow said raft into Quincy bay, and requires the complainant to prove the same.

This defendant admits that it requested said half raft to be brought as soon as possible to St. Louis, Missouri, and that it was finally towed into St. Louis, Missouri, by the steamer Robert Dodds, and delivered to this defendant at St. Louis.

This defendant, further answering, says that immediately after the half raft had been delivered to its custodian and watchman, said Edward L. Willets, in Boston bay, said Edward L. Willets wrote to this defendant to send him ropes or lines to securely fasten and tie the same; that when the steamer Dodds arrived at St. Louis with said half raft this defendant gave to the son of the complainant, John McCaffrey, who was clerk of said boat, ropes and lines and requested him to give the same to said Edward L. Willets as soon as the boat arrived there, and at the same time notified the said John McCaffrey, Jr., that the raft was to remain there during the winter, and that the said complainant had frequently informed

this defendant that the said John McCaffrey, Jr., was his agent, and that whatever instructions were given to him would be the same as if given to the complainant.

This defendant denies the allegation in complainant's bill that the said half raft in Boston bay has been in the possession of the complainant and held and controlled by his limes and ropes. This defendant, as has been previously stated, claims that the said raft was in the possession of this defendant by its agent and watchman, E. L. Willets, from the time it was delivered to him in Boston bay. This defendant cannot say if said boat was moored against the outside of said raft, but if such was the case it would be of little consequence, as it is customary for steamboats to be moored on the outside of a raft during the winter, so as to always to be in deep water and safe; but this defendant most emphatically denies  
45 that the said raft has been in the actual care, custody, and possession of an employé of the complainant from the 13th of October to the present time, and most positively asserts that it was not in the possession of the said complainant after the same was landed in Boston bay.

This defendant denies that in towing rafts from the pineries from the North to St. Louis, Missouri, that it has been for years customary to tow entire rafts to Alton slough; denies that it was then a safe harbor for rafts; admits that it is distant about 20 miles from St. Louis, Missouri; denies that there was any custom regarding the same or any that was known to this defendant, and denies that the contract between the complainant and defendant was made in view thereof and with the understanding that the complainant should act upon any such custom; that the contract which this defendant has with the complainant speaks for itself, and it is to be governed by its own terms and language, and sets forth the rights of each party thereto, and there is no contract whatever outside said written one.

This defendant, further answering, says that as it understands the contract the complainant was to divide rafts and have the same landed where this defendant might request him, and for such towage there was a sum stated in said contract which was to be his compensation, and this defendant was liable for none other, and in all that part of complainant's bill in which he tries to make an extra charge of \$200.00 for dividing the raft and towing them into Boston bay and Quincy bay this defendant says is entirely new to it, and that the said claim is without any foundation and unjust.

46 This defendant absolutely denies all that part of complainant's bill in which he alleges that this defendant was to pay him over and above the regular contract price for towing said raft 10 and said half raft 2 by the method it directed; denies that it was understood and agreed that this defendant would pay to the complainant over and above the contract price whatever it was reasonably worth to tow raft 10 and raft 2 by the methods above mentioned in complainant's bill and over and above what it was worth to tow

said half raft 10 by what complainant complains is the usual method and which complainant states was worth \$200.00.

This defendant most positively states that there is no foundation for or justice in said claim. This defendant agreed to pay said complainant nothing for the towing except what is stated in the contract, and that the contract binds them both, and that whatever would be due the complainant by the terms of the contract for towing the raft is what he is entitled to and no more.

This defendant, further answering, denies most positively that the complainant became liable for any harbor charges by leaving the said half raft No. 1 in Boston bay or the half raft No. 2 in Quincy bay; that said half raft 1 was immediately left in charge of this defendant's watchman, and this defendant became liable for said harbor charges, whatever they are, and the complainant never became responsible for any.

This defendant admits that it made an assignment on or about the time alleged in complainant's bill, and that Eugene C. 47 Tittman and David Bronson are its assignees; that this defendant does not know when the complainant first learned of its making an assignment.

This defendant admits that on or about the 12th day of November, 1894, the said complainant called on this defendant at its office, in St. Louis, Missouri, but this defendant denies that the said complainant at that time presented any claim to this defendant for towages or charges claimed to be due him under the contract; denies that complainant then offered and said that he was ready and willing to tow half raft No. 1 to its landing in St. Louis, Missouri; denies that he told this defendant that he held the said half raft for the entire claim and charges which he had against the whole raft No. 10; admits that in talking with the said complainant the said complainant asked this defendant what he wanted done with this raft, the said half raft in Boston bay, and this defendant informed him that he had no interest whatever in said raft; that the said raft had been sold by this defendant to its codefendant, The Knapp, Stout & Co. Company, and that this defendant had delivered the possession of said raft, which it had, to the said Knapp, Stout & Co. Company, which company was now in possession of the said raft.

This defendant denies most positively that he ever told the complainant to call on Knapp, Stout & Co. Company, as this defendant very well knows that the Knapp, Stout & Co. Company had nothing whatever to do with the complainant or his bill or charges which he might have against this defendant. This defendant further states that the complainant called a second time on this defendant 48 in St. Louis, Missouri, and stated that he had just come from the Knapp, Stout & Co. Company's office, and had a quarrel with Mr. John H. Douglass, of said company, and the complainant then appeared to be vexed and annoyed and said he was now going to hold that raft if he could possibly do so. This defendant knows nothing of what took place when the complainant was at the office of its codefendant, the said Knapp, Stout & Co. Com-



pany, and requires the complainant to prove his allegation in this respect.

This defendant most positively denies the following allegations in complainant's bill: "Your orator further represents that half raft 1 has never been delivered to the Knapp, Stout & Co. Company, and the Knapp, Stout & Co. Company up to the present time has never attempted to take possession thereof," as this defendant, at the time of the sale and delivery of the said raft to the said Knapp, Stout & Co. Company, delivered the possession thereof to the said Knapp, Stout & Co. Company; that this defendant sold the said raft to the said Knapp, Stout & Co. Company for the sum of \$15,000.00, which included all the shingles, lath, and pickets on the same and timber and loose lumber and lines tied to the same; that \$5,000.00 were paid in cash and a note given for \$10,000.00, which was promptly met on maturity; that upon the payment of the money a bill of sale was given to the said Knapp, Stout & Co. Company and an order also given by this defendant on its watchman, the said E. L. Willets, informing him that this defendant had sold said raft to the said Knapp, Stout & Co. Company and to deliver immediate possession of the same to the said Knapp, Stout & Co. Company.

49 This defendant, further answering, denies that the said complainant has a lien on said half raft No. 1 for the amount of \$4,088.48, and says that it has not a lien on said half raft for any sum of money whatever; that whatever this defendant may owe the said complainant for towing said raft under the contract is a personal claim which he has against this defendant, but that he has no lien or claim on the raft from said indebtedness; that the complainant delivered the said raft to this defendant by its agent, E. L. Willets; that he parted with its possession at that time and therefore has no claim for a lien; that this defendant at that time was supposed to be perfectly good, and the complainant never since the contract was made ever claimed to have any lien or at any time refused to deliver any raft to this defendant before getting his money; that the complainant trusted this defendant implicitly on that respect, supposing, as was generally supposed, that this defendant was perfectly solvent.

This defendant admits that on the said half raft there are shingles, pickets, and lath-, but does not now recollect how many feet of lumber said raft contains, nor how many bundles of lath- or shingles or pickets there are on the raft.

This defendant admits that the said complainant has demanded payment of the assignees of this defendant for a large claim—if this defendant remembers rightly, some \$24,000.00 or \$25,000.00—upon which claim, as this defendant is informed, the assignees have not yet passed.

This defendant does not know whether or not the statement in complainant's bill that the assets of this defendant will not  
50 pay over fifty cents on the dollar is true or not; that this defendant at the time it made the assignment had a very large amount of property, and as to what *it* will be realized by the

creditors depends upon what said property will bring. If it brings its value or near its value, all of the claimants will receive full payment for their claims.

This defendant only knows in a general way that the Knapp, Stout & Co. Company has persons tow their lumber down the Mississippi river and does not know how large a force of men they may have, and knows nothing about any threats being made by the said Knapp, Stout & Co. Company, as soon as navigation opens, to take possession forcibly of said raft, but does not believe anything of the same, for the reason that the said raft since this defendant sold it to the Knapp, Stout & Co. Company have always been in possession of the said raft, and there would be no necessity of employing a large force to take possession; that complainant knows that this allegation in his bill is not true, and why he inserted it in his bill this defendant does not understand.

This defendant, further answering, denies that there was any necessity for moving said half raft No. 1 prior to what is termed the June rise in the Mississippi river; denies that its position is such as to cause any danger by the rise of the river or of its being torn to pieces, destroyed, or carried away.

This defendant states that all that part of complainant's bill in which he says that it is doubtful as to whether he would have the right to move said half raft from its moorings he does not know why it is inserted in the bill, as the complainant knew that

51 he had no right to remove the same; that he had no possession of said raft; that it had always been in the possession of this defendant from the time it was landed, and in the possession of the said Knapp, Stout & Co. Company from the time this defendant sold it to the Knapp, Stout & Co. Company.

Having fully answered, this defendant prays to be dismissed.

SCHULENBURG AND BOECKELER LUMBER  
COMPANY.

BASSETT & BASSETT &  
WISE & McNULTY,

*Solicitors for Defendant.*

Filed in the circuit court this 13th day of August, A. D. 1895.

WM. McMANUS, *Clerk.*

52 The following is a copy of the answer of Knapp, Stout & Co. Company to the complainant's bill filed herein:

STATE OF ILLINOIS, }  
 County of Mercer, } ss :

In the Circuit Court, August Term, A. D. 1895.

JOHN MCCAFFREY

vs.

SCHULENBURG & BOECKELER LUMBER COM-  
 pany, Knapp, Stout & Co. Company,  
 David Bronson and Eugene C. Tittman,  
 Assignees of the Schulenburg & Boeckel-  
 er Lumber Company.

In Chancery.  
 Bill to Enforce a Lien.

*The Answer of the Knapp, Stout & Co. Company, One of the Defend-  
 ants, to the Bill of Complainant of John McCaffrey, Complainant.*

This defendant, protesting and insisting that it should not be required to answer the complainant's bill of complaint, because this court has no jurisdiction of the subject-matter in this suit for the reason that the matter in controversy is a matter of which the United States admiralty courts have sole and exclusive jurisdiction, and this court has no jurisdiction to decree a lien as is prayed for in the complainant's bill, and this defendant, although hereinafter answering the bill filed in this suit, does not thereby waive or intend to waive the right on the hearing hereof to claim and insist that this court has no jurisdiction, as above stated. This defendant, now and at all times hereafter, saving — itself all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or so much or such parts

53 thereof as this defendant *as* advised it is or are material or necessary for it to make answer unto, answering, says that it has never heard or been informed, save by the complainant's bill, that the complainant made and entered into a written contract with this defendant's codefendant, The Schulenburg & Boeckeler Lumber Company, as is alleged by complainant in his bill, and this defendant has no knowledge whether the contract set out in the complainant's bill is the contract the complainant had with its codefendant, The Schulenburg & Boeckeler Lumber Company, and insists upon the complainant proving the contract and the allegation in his bill in this particular.

This defendant, further answering, says it has never heard or been informed, save by the complainant's bill, that the complainant, immediately upon the execution of the said supposed contract made between the complainant and the said Schulenburg & Boeckeler Lumber Company, as complainant alleges, as aforesaid, entered upon the performance thereof, and that the complainant has at all times faithfully complied with all the conditions of the said contract, and this defendant requires the complainant to prove this allegation.

This defendant denies that there was delivered to the complainant for towage on October 13th, 1894, at Stillwater, in the State of

Minnesota, a raft of lumber containing 288 cribs of lumber and deck loading, consisting of various kinds of lumber, aggregating a total of 3,321,314 feet of lumber, besides laths, shingles, and pickets, as is alleged in complainant's bill; denies that on the delivery of said raft to the complainant he proceeded to tow said raft No. 10 to St. Louis, Missouri, by the steamboat Robert Dodds; denies that said steamboat was of more than five tons burden; denies that said steamboat was owned by the complainant; denies that the

54 complainant was in actual possession of said raft, either personally or by his employés or by the captain and crew of said steamboat, at the times and in the manner alleged in complainant's bill or at any time before the commencement of this suit.

This defendant has no knowledge that during the latter half of October and the first half of November, 1894, the water in the Mississippi river from Stillwater, Minnesota, to St. Louis, Missouri, was in a very low stage, or that this fact made the towage of rafts in the river slow and difficult, as *in* alleged in said complainant's bill.

This defendant denies that the complainant received a communication from its codefendant, The Schulenburg & Boeckeler Lumber Company, to deliver the half raft No. 1 in St. Louis, Missouri, as soon as possible; denies that at the date of receiving said claimed communication the steamboat Robert Doods had not yet reached Le Claire, Iowa; denies that the complainant ordered the captain and crew of said steamboat to tow said raft into Boston bay, in Mercer county, Illinois, and there divide it, tying one half of said raft to the shore and employing a man to watch it, and then to proceed with the other half of said raft to St. Louis, Missouri; denies that instructions were followed and carried out, as is alleged in the complainant's bill. This defendant denies that the half raft left in Boston Bay harbor was tied to the shore by the lines of complainant, and has so remained in said harbor, tied with the complainant's lines, to the bringing of this suit; denies that a man was employed to watch and guard said half raft as custodian thereof for the complainant, and that complainant was in possession of the same, as is alleged in complainant's bill.

55 This defendant has no information, except from complainant's bill, of the communication alleged to have been made by its codefendant, The Schulenburg & Boeckeler Lumber Company, to complainant to take the half raft into Quincy bay, afterwards to bring the raft to St. Louis, Missouri, or that the complainant did so bring said raft to St. Louis, Missouri, and deliver the same to its codefendant, The Schulenburg & Boeckeler Lumber Company, as is alleged in the complainant's bill, and requires complainant to prove the same; denies that the captain of said steamboat, alleged to be Captain Tromley, and its crew, returned in November, 1894, from St. Louis to Boston bay, but if such was the case the defendant denies that said steamboat was attached to said half raft with the lines of complainant, and has so remained attached to said half raft from thence hitherto, as is alleged in complainant's bill; that even if such were the case, it possesses no significance, as it is usual and customary for steamboats to remain on the outside of a raft during

winter, so as to remain all the time in deep water, the raft being a mere protection for that purpose, and the lines from the boat to the shore over the raft gives the boat or the owner of the same no right to the possession of the raft, but it is a mere convenience for and safety to the boat to be thus moored in deep water on the outside of the raft.

This defendant denies that the said half raft has been in the care, custody, control, and possession of complainant since the 13th of October, 1894, to the commencement of this suit, either personally or by a watchman or by agents, employes, or servants, or controlled or held by his lines, but the defendant states the fact to be that the said half raft has been in the continuous possession of this defendant since the 7th day of November, 1894, by their watchman; that it is the owner of the same, and the complainant has no claim or right to said raft as against this defendant, as this defendant will hereinafter more fully and particularly set forth.

This defendant denies all that part of complainant's bill about a custom of towing rafts to Alton slough, and knows nothing as to whether the complainant was put to great trouble, inconvenience, and expense by dividing the raft, towing the half of it to St. Louis, and leaving the other half raft in Boston bay, or as to whether the complainant is entitled from the Schulenburg & Boeckeler Lumber Company to compensation for the same, or whether it should be \$200.00, as is alleged in complainant's bill, and requires complainant to prove the same.

This defendant has no information whatever about the following allegation in complainant's bill, viz., "Your orator further represents that while no particular amount was fixed which Schulenburg & Boeckeler Lumber Company was to pay him over and above the regular contract price for towing said raft No. 10 and said half raft No. 2 by the method it directed, as above set forth, it was understood and agreed that it would pay to your orator over and above the contract price whatever it was reasonably worth to tow said raft No. 10 and raft No. 2 by the method it requested over and above what it was worth to tow said raft No. 10 by the usual method, and your orator represents that it was reasonably worth the sum of \$200.00 more to tow raft No. 10 and half raft No. 2 by the methods they were towed in accordance with the request of the Schulenburg & Boeckeler Lumber Company than to tow them by the method customarily pursued by your orator and contemplated by the parties to said contract at the time the same was entered into," and denies the same and requires the complainant to prove the same on the hearing hereof.

This defendant has no information whatever, except from the complainant's bill, that the complainant is liable for harbor charges alleged to have been incurred by taking said raft in Boston bay and Quincy bay, or whether the liability so claimed to be incurred is \$150.00, or whether complainant has paid part of the same; this defendant insists, as between the complainant and the defendant, this defendant has nothing to do with such charges, and is in no manner liable for the same; that if such a liability was actually in-

curred it was a mere personal matter between complainant and his codefendant, The Schulenburg & Boeckeler Lumber Company, and insists upon complainant proving these allegations.

This defendant admits that on or about the 8th day of November, 1894, its codefendant, The Schulenburg & Boeckeler Lumber Company, made a voluntary assignment, and that Eugene C. Tittman and David Bronson are the assignees, as is alleged in complainant's bill; that the said Schulenburg & Boeckeler Lumber Company had been doing a large business for a long time in St. Louis and elsewhere, and that the defendant supposed a profitable business, and was very much surprised when reading in the papers of their assignment, it being the first intimation that said defendant had that the Schulenburg & Boeckeler Lumber Company were not solvent.

This defendant has no information, except from complainant's bill of complaint, that the complainant called on the Schulenburg & Boeckeler Lumber Company as soon as he heard of their assignment, and that he then presented to said company his claim for towing raft No. 10 and for charges on the same, and that he then

58 offered to take said half raft, then in Boston bay, to St. Louis, Missouri, and that he then told said Schulenburg & Boeckeler

Lumber Company that he would hold the said raft for the entire claim and charges he had against the whole raft, and this defendant requires the complainant to prove these allegations. This defendant, however, was informed and believes said information to be true that the complainant, after the assignment was made by the Schulenburg & Boeckeler Lumber Company, called on said company for instructions as to what they wanted done with said half raft in Boston bay and was then informed by said Schulenburg & Boeckeler Lumber Company that said company no longer had any interest in said half raft, but that said Schulenburg Lumber Company had sold the said half raft so in Boston bay to this defendant, as is alleged in complainant's bill, and at the same time the complainant was informed that said Schulenburg & Boeckeler Lumber Company had delivered the said half raft in Boston bay to this defendant, and that this defendant was now in possession of said half raft.

This defendant, further answering, says that it admits that the complainant called at the office of this defendant, in St. Louis, Missouri, on or about the 12th day of November, 1894, but most positively denies that complainant then informed or advised the manager of this defendant that he was in possession of said raft No. 1, and that he held the same for the entire sum due him for towing the half raft and for charges incurred on the raft; denies that complainant then said that he was ready and willing forthwith to tow said half raft from Boston bay to the landing of the Schulenburg & Boeckeler Lumber Company in St. Louis, Missouri, and there deliver it to whomsoever said company might direct upon payment of the amount he claimed, as is charged in said complainant's bill, and this defendant requires the complainant to prove the same.

59 This defendant, further answering, denies that the manager of this defendant company made an assault upon the com-



plainant; denies that the said manager attempted to strike the complainant with a chain and used toward the complainant vile and opprobrious language; admits that the said manager informed the complainant that he (complainant) was not in possession and had no right to the possession of said raft in Boston bay; that this defendant was in possession of said half raft, and forbid complainant to move said half raft or to tow it to St. Louis or any other place; admits that said manager told complainant that he must not touch or tow said raft; denies that said manager said to complainant that he (complainant) should release and deliver said half raft to this defendant in Boston bay; denies that said manager told complainant that if he did not deliver said half raft to this defendant this defendant would take the same away from him, and requires complainant to prove these allegations.

This defendant, further answering, says it is not true that said half raft No. 1 in Boston bay had ever been delivered to this defendant up to the commencement of this suit, and that defendant never attempted to take possession of the same, as is alleged in complainant's bill; that the truth is that this defendant has had, by its watchman, the sole possession of said raft since the 7th day of November, 1894, as this defendant will hereinafter more particularly state.

This defendant denies that the complainant has a lien against said half raft No. 1 in Boston bay, including the lumber, timbers, laths, shingles, and pickets thereon, for the sum of \$4,086.48 and interest, as is alleged in complainant's bill; denies that he has a

60      lien for any amount on said raft or that he has any lien which can be enforced or maintained as against this defendant, which is an innocent purchaser for value of said half raft, the said half raft, when this defendant purchased it, being in the possession of its codefendant, The Schulenburg & Boeckeler Lumber Company, who then delivered the possession of the said half raft to this defendant, and this defendant, by its watchman, has been in continuous possession of the same since the 7th day of November, 1894.

This defendant has no knowledge or information as to how much lumber raft No. 10 contained or if half raft No. 1 now in Boston bay contains a little less than half of the lumber in said raft, but *admits* that there *was* on said raft bundles of shingles, laths, and pickets, but whether the number of bundles claimed by complainant is correct this defendant cannot say. This defendant, however, has given a list or bill of the articles contained in said raft when it purchased the same, which, as this defendant understands, is to be filed in this court and remain in the files of this suit, which bill or list will explain itself.

This defendant, further answering, says that it has no information or belief as to whether the assets of the Schulenburg & Boeckeler Lumber Company will pay less than fifty cents on the dollar, nor has it any knowledge as to whether, in their assignment, the said Schulenburg & Boeckeler Lumber Company preferred creditors to



the amount of \$200,000.00, or whether said assignment is valid in the State of Illinois.

This defendant, further answering, says it admits it has control of several steamboats and a large force of men navigating the Mississippi river north from St. Louis, Missouri, during the seasons of navigation, but denies that it ever told any of its agents or employees that as soon as navigation opened in the spring of  
61 1895 this defendant would, with a large force, take forcible possession of said half raft No. 1 in Boston bay and deprive complainant of the possession, as this defendant had since the 7th day of November, 1894, peaceable and open possession of said raft by its watchman, and since that time and previous thereto complainant did not have possession thereof; that this defendant, having possession, when it desired to remove said raft would have done so, as it had a perfect right to remove its property which was in its possession and for which it paid a valuable consideration.

This defendant, further answering, admits that said half raft is now attached to the shore within a few yards of the channel of the Mississippi river, where it is easy of access for steamboats, but this defendant has no information as to whether it would be ruinous financially to keep a force of men on said half raft to defend his possession from the time navigation opens in the spring until this suit is determined, as is alleged in complainant's bill, but this defendant does know the complainant had no possession of the said raft to defend, had not possession of said raft when this suit was brought nor since the landing of said raft in October, 1894, and complainant knows that he really has no lien or a claim to a lien against said raft, but is making the same for two reasons: first, because he fears on account of said Schulenburg & Boeckeler Lumber Company making an assignment he will not receive what said company owes him, as he supposed said company perfectly solvent, trusted them and delivered the raft to them, and thus lost any claim to a lien, if he ever had one; second, because the complainant does not like the manager of this defendant, one John H. Douglass, and desires to annoy the defendant by this suit.

62 This defendant denies that the said half raft No. 1 in Boston bay should be removed prior to what he termed the June rise in the Mississippi river, which occurs about June 1st in each year, for the reason alleged in the complainant's bill; denies that it is doubtful if complainant has any right to remove said half raft from its present moorings, and says there can be no doubt that complainant has no right to remove said raft, as he was not when this suit was brought in possession of said raft and had not been since the latter part of October, 1894, when complainant delivered said half raft to its codefendant, The Schulenburg & Boeckeler Lumber Company, and all that part of complainant's bill in which he represents that he should not be held and made responsible for the safe keeping of said raft is alleged, as this defendant supposes, to be merely in keeping with many other allegations in this bill which are wholly immaterial and untrue.

This defendant, further answering, says that it is informed and

believes, and states it as a fact, that the complainant was doing some towing for its codefendant, The Schulenburg & Boeckeler Lumber Company; that the complainant was working under the orders, directions, and instructions of the said Schulenburg & Boeckeler Lumber Company; that said Schulenburg & Boeckeler Lumber Company ordered the complainant, in the latter part of October, 1894, to wit, on the 26th day of said month, to bring into the harbor of Boston bay the raft or half raft in controversy, and to deliver the same to their watchman, Edward L. Willetts; that this complainant, by his servants, towed raft or half raft in controversy, and on

63 said day land- the same in Boston bay, and then and there delivered said raft or half raft in controversy to said Schulenburg & Boeckeler Lumber Company, by delivering the same to its servant and agent, Edward L. Willetts, who had been instructed by said Schulenburg & Boeckeler Lumber Company to receive said raft or half raft in controversy and take charge of it and watch the same; that said Edward L. Willetts at once received said raft from the complainant for said Schulenburg & Boeckeler Lumber Company, took charge of the same, and from thence on had the charge, control, and possession of said Schulenburg & Boeckeler Lumber Company of said raft or half raft in controversy, and that the complainant when he delivered said raft to said Edward L. Willetts for the Schulenburg & Boeckeler Lumber Company parted with his possession, and, if entitled to a lien for his services in towing said raft or half raft in controversy, he waived or lost the same by parting with the possession of the said half raft when he delivered said raft to said Schulenburg & Boeckeler Lumber Company.

This defendant, answering, states the fact to be that said raft was towed into Boston bay by a steamboat belonging to the complainant, called the Robert Dodds, and worked by a crew employed by complainant; that when said raft in controversy had been delivered to said Edward L. Willetts for the Schulenburg & Boeckeler Lumber Company, and he had for the said company taken possession and charge of the same, the said steamer Robert Dodds then proceeded to St. Louis, Missouri, and returned on November 4th, 1894; that during the absence of the said steamer no one had the care or custody of said raft, but the said Edward L. Willetts, for the said Schulenburg & Boeckeler Lumber Company; that when said steamer returned on November 4th, 1894, it broght two lines from the Schulenburg & Boeckeler Lumber Company, which were

64 delivered to the said Edward L. Willetts for said Schulenburg & Boeckeler Lumber Company for the purpose of securely tying said raft, which lines were at once put on said raft, and the raft was securely tied with them; that after that the steamboat was moored for winter quarters against said raft, but the raft remained and was in possession of the Schulenburg & Boeckeler Lumber Company. This defendant further states that on the 4th day of November, 1894, William L. Boeckeler, of the Schulenburg & Boeckeler Lumber Company, came to the office of this defendant in St. Louis, Missouri, saw John H. Douglass, of this defendant company (The Knapp Stout & Co. Company), and desired to sell

said raft in controversy, then in Boston bay, to this defendant, and showed the said defendant a bill or statement of the amount of lumber in the raft and what was on it, and stated that the raft was in the possession of the Schulenburg & Boeckeler Lumber Company, tied with its lines to the shore and in charge of its watchman; that this defendant finally bargained for and bought the said raft from the said Schulenburg & Boeckeler Lumber Company upon the representations aforesaid, paying therefor \$5,000.00 in cash, and giving its note for \$10,000.00, which it promptly paid on maturity; that said Schulenburg & Boeckeler Lumber Company gave to this defendant an order on its employé and watchman, Edward L. Willetts, to turn over or deliver said raft, top load, and lines to this defendant, informing said Edward L. Willetts that this defendant had purchased the said raft from said Schulenburg & Boeckeler Lumber Company, which order this defendant at once sent by its agent and employee, Howard Baker, and on the 7th day of November, 1894, it was delivered by him for this defendant to said Edward L. Willetts, who at once, for said Schulenburg & Boeckeler Lumber Company, delivered to Howard Baker, for this defendant  
65 company, the said raft in controversy, and the shingles, laths, pickets, and lines on the same, and this defendant has ever since had possession of the same.

This defendant, further answering, says that after this defendant had purchased said raft and the possession had been delivered to it and was in the peaceable possession of the same the complainant called at the defendant's office and desired to know if it was true, as he had been informed by the Schulenburg & Boeckeler Lumber Company, that this defendant had purchased the raft in Boston bay, lines, shingles, laths, and pickets on the same, and upon being informed that such was the case the complainant then said he had a claim against the Schulenburg & Boeckeler Lumber Company for towing the raft to New Boston bay. He never claimed that he had a lien on the raft for said claim or had any possession of the said raft, but frankly admitted he had delivered the possession of the raft to the Schulenburg & Boeckeler Lumber Company, and then got angry and claimed this defendant purchased the raft and had it delivered to it in order to make the complainant lose his claim, as he now feared that as the Schulenburg & Boeckeler Lumber Company had made an assignment it would not pay his claim, and became very abusive and violent and left defendant's office angry and without any reasonable cause, as this defendant, when it purchased the said raft and top lumber, had no knowledge about the Schulenburg & Boeckeler Lumber Company owing the complainant anything.

This defendant, further answering, says that it is informed and believes said information is true, that on the 28th day of January, 1895, the complainant filed with the assignees of the Schulenburg & Boeckeler Lumber Company a claim for \$24,558.39, in which claim, and as part of the same, is included the claim for towing  
66 the raft designated by complainant as No. 10 from Stillwater, Minnesota, to St. Louis, Missouri; that even if com-

plainant had two remedies, one in equity for his lien and one legal for his debt, he had to elect which remedy he would pursue, and having elected to proceed legally against the assigned estate of the Schulenburg & Boeckeler Lumber Company, that election binds him, and the complainant could not afterwards bring this suit claiming a lien.

This defendant further insists that complainant never had a claim for a lien; that his remedy is in law for damages on his contract with the Schulenburg & Boeckeler Lumber Company (if he has a contract, as he claims in his bill); that even if under said contract complainant could claim a lien he waived and abandoned it by delivering possession of the raft to the Schulenburg & Boeckeler Lumber Company as against this defendant, being an innocent purchaser for value, and the possession having been delivered to this defendant when the sale was made and the property remaining continuously in its possession, the complainant cannot enforce any lien as against this defendant.

This defendant, having fully answered, prays to be dismissed with its reasonable costs, etc.

BASSETT & BASSETT &  
WISE & McNULTY,

*Solicitors for Defendant.*

Filed in the circuit court this 13th day of August, A. D. 1895.

WM. McMANUS, *Clerk.*

67 The following is a copy of the answer of Tittman and Bronson, assignees, filed herein :

STATE OF ILLINOIS, }  
County of Mercer, } <sup>ss :</sup>

In the Circuit Court, to the August Term, A. D. 1895.

JOHN MCCAFFREY

*vs.*

THE SCHULENBURG & BOECKELER LUMBER Company, Knapp, Stout & Co. Company, David Bronson and Eugene C. Tittman, Assignees of the Schulenburg & Boeckeler Lumber Company.	}	In Chancery. Bill to Enforce Lien.
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The joint and several answer of David Bronson and Eugene C. Tittman, assignees of the Schulenburg & Boeckeler Lumber Company, two of the defendants, to the bill of complaint of John McCaffrey, complainant.

These defendants, protesting and insisting that they should not be required to answer the complainant's bill of complaint, because this court has no jurisdiction of the subject-matter of this suit, for the reason that the matter in controversy is a matter of which the United States admiralty courts have sole and exclusive jurisdiction,

and this court has no jurisdiction to decree a lien as is prayed for in complainant's bill, and these defendants, although hereinafter answering the said bill filed in this suit, do not thereby waive or intend to waive the right on the hearing hereof to claim and insist that this court has no jurisdiction, as above stated—these defendants, now and at all times hereafter, saving to themselves all manner of benefit and advantage of exception which can or may  
68 be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much or such parts thereof as these defendants are advised it is or are material or necessary for them to make answer unto, answering, say: These defendants admit that the Schulenburg & Boeckeler Lumber Company is a corporation organized and existing under the laws of the State of Missouri, as is alleged in complainant's bill.

These defendants, further answering, say that they are informed and believe, and believe said information to be true, that the complainant and the said defendant, The Schulenburg & Boeckeler Lumber Company, did make and enter into a contract, by which said contract the said complainant, John McCaffrey, was to do the towing of lumber, rafts, etc., for the Schulenburg & Boeckeler Lumber Company upon the Mississippi river, but whether the contract set out in the complainant's bill is an exact copy in words and figures of the contract between the Schulenburg & Boeckeler Lumber Company and the said John McCaffrey, as is alleged in complainant's bill, these defendants cannot say, and require the complainant to prove that such is the case.

These defendants, further answering, say that they were informed that the said complainant did perform service under the said written contract between himself and the said Schulenburg & Boeckeler Lumber Company, and that the complainant in this suit claims that the said Schulenburg & Boeckeler Lumber Company are owing him considerable money for services which he claims he has so rendered, but know nothing about the facts.

These defendants, further answering, admit that the Schulenburg & Boeckeler Lumber Company made an assignment, and that these  
69 defendants are assignees under said assignment and have the charge and control, as such assignees, of the assets and affairs of the said Schulenburg & Boeckeler Lumber Company, but these defendants cannot at present say how much the creditors of the Schulenburg & Boeckeler Lumber Company will ultimately be paid on their claims, and neither admit nor deny that the said creditors will only receive fifty cents on the dollar of their claim, and require the complainant to prove this allegation in his bill.

These defendants, further answering, say that, in accordance with the laws of Minnesota and of Missouri, after they became such assignees under the assignment of the Schulenburg & Boeckeler Lumber Company they gave proper notice to all creditors of said Schulenburg & Boeckeler Lumber Company of the time when and place where they would receive, hear, and adjust claims of creditors against said assigned estate; that on the 28th day of January, 1895,

being one of the days designated by the defendant Eugene C. Tittman for the hearing of such claims, there was presented to and left with him, as such assignee, by the complainant, through Messrs. Lubke & Muench, attorneys at-law, a claim of said John McCaffrey against said assigned estate of said Schulenburg & Boeckeler Lumber Company, of which claim the annexed, marked "Exhibit A," is a true and exact copy.

These defendants, further answering, say that they have never heard or been informed, save by said complainant's bill, of all the other matters and things set forth and alleged in said complainant's bill, and to avoid the necessity of specifically repeating and denying the same these defendants here specifically and particularly deny each and every allegation which they have not specifically answered, and require the complainant to prove the same.

Having fully answered, the defendants pray to be dismissed, etc.

DAVID BRONSON AND  
EUGENE C. TITTMAN,

*Assignees of Schulenburg & Boeckeler Lumber Company.*

BASSETT & BASSETT &  
WISE & McNULTY,

*Soli's for Def'ts.*

71 The following is a copy of "Exhibit A," attached to the answer of Bronson and Tittman, filed herein:

STATE OF MINNESOTA, }  
County of Washington. }

District Court, First Judicial District.

In the Matter of the Assignment of SCHULENBURG & BOECKELER LUMBER COMPANY, Insolvent.

*Proof of the Claim of John McCaffrey, of Le Claire, Iowa.*

STATE OF IOWA, }  
County of Scott. }

On this — day of December, 1894, before me personally came John McCaffrey, who, being by me first duly sworn, on oath says that at and before making the assignment in this matter by the above insolvent, The Schulenburg & Boeckeler Lumber Company, it was and now is justly and duly indebted unto the said John McCaffrey in the sum of twenty-four thousand five hundred and fifty-eight dollars and thirty-nine cents (\$24,558.39), with interest thereon from and after the dates hereinafter set forth on the respective items composing said gross sum at the rate of seven per cent. per annum; that the items composing said gross sum are as follows and were incurred in pursuance of the following facts:

72 First. The sum of eight thousand dollars thereof in pursuance of that certain contract bearing date April 6th, 1893, made between said insolvent and this affiant, wherein and



whereby said affiant was to have the towing of certain rafted lumber of said insolvent from Stillwater, Minn., to St. Louis, Mo., and by the terms of said contract said insolvent covenanted to and with this affiant that this affiant was to have furnished to him by the said insolvent seventy-five million feet of rafted lumber, to be by him towed to St. Louis, Mo., during the three years or seasons succeeding the date of said contract, for which he was to receive from said insolvent the sum of one dollar twelve and one-half cents per thousand feet for such towing; that, in pursuance of such contract and the covenants so made by insolvent, affiant commenced work so stipulated to be by him performed, and during the seasons of 1893 and 1894 affiant towed of said lumber all of the amount so stipulated to be by him towed, except the amount of twenty-seven million eight hundred and twenty-five thousand two hundred and eight feet; that affiant has been, now is, and at all times has been ready to carry out the terms of said contract, but by the insolvency of said insolvent has been prevented from so doing; that by reason of insolvent's failure to so furnish the said lumber in pursuance of said contract affiant has been damaged to the amount of eight thousand dollars, the amount which he would have made as profit in towing said lumber at the price so stipulated in said contract, the said amount of eight thousand dollars being the estimated profit on towing the remaining twenty-seven million eight hundred and twenty-five thousand two hundred and eight feet.

Second. The sum of seven thousand dollars, an amount 73 stipulated in said contract to be refunded of the *of the* purchase price paid for the steamers Charlotte Boeckeler, Helen Schulenburg, and Robert Dodds, which the affiant purchased of insolvent and paid for to do said towing, and which amount was to be repaid to said affiant in the event that there was no towing to be done for insolvent by affiant after the year 1895.

Third. The sum of two thousand seventy-two dollars and eighteen cents, an amount due and unpaid on work, labor, and services performed during the season of 1893 and 1894 for said insolvent as part performance of said contract, a statement of which account is hereto attached, marked "Exhibit A."

Fourth. The sum of three thousand seven hundred and forty-nine dollars and seventy-three cents, an amount due as counter-charges for loss of time and extra service in performance of contract caused by acts of insolvent and towing of lumber not credited in schedules of rafts as given to affiant. All as shown by a statement of said various items contained in a statement hereto attached and marked "Exhibit B."

Fifth. The sum of three thousand seven hundred and thirty-six dollars, due for towing raft designated as number ten by said insolvent from Stillwater to St. Louis, and containing three million three hundred and thirty-eight thousand three hundred and seventy feet in raft and eighty-two thousand nine hundred and forty-four feet in grub plank during the season of 1894.

That all of said sums, with interest from date hereof at seven per cent. per annum, is so due over and above all payments,



74 counter-claims, and set-offs whatever; and affiant says that for said indebtedness the said John McCaffrey has not nor has any person by his order or for his use or benefit had or received any manner of satisfaction or security whatever, except for the amount due on running said raft number ten, the basis of claim number five, \$3,736.48, which amount affiant claims a lien for towing the whole of said raft on one-half of said raft, which is now lying in harbor at New Boston, Illinois, and which claim affiant retains the right to enforce.

A copy of the contract entered into between affiant and said insolvent is hereto attached and marked "Exhibit C" and made a part hereof; that all of said exhibits are hereto attached and hereby made a part hereof.

Subscribed and sworn to before me this — day of December, 1894.

Notary Public, Scott Co., Iowa.

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## EXHIBIT "B."

*Counter-charges Against Schulenburg & Boeckeler Lumber Company.*

1893.

April 18.	Crown Coal & Towing Co., pulling off raft...	\$5.00
Oct. 31.	Overcharge Str. Thos. Parker, dropping pieces from Alton.....	40.00
Nov. 15.	Alton Harbor Co., watching raft, 144 cribs..	37.80

1894.

June 20.	Alton Harbor Co., watching rafts.....	70.56
July 28.	Dropping two pieces to Carondelet .....	50.00
April —.	Shortage, raft No. 1, delivered April 1st, 13,262 feet at \$15.00.....	198.93
	Shortage in shingles and lath, 29,700 at \$2.00.	59.40

1893.

Aug. 8.	Raft No. 6 stuck at mill, lost 20 hours getting it off.....	200.00
Sept. 1st.	Raft No. 7 in five pieces; lost nine and one-half hours getting it ready.....	95.00
Sept. 28.	Raft No. 8 in four pieces; lost ten hours getting ready .....	100.00
April 27.	Coupling raft No. 1 .....	\$30.00
Sept. —.	Coupling raft No. 7 .....	50.00
Sept. 28.	Coupling raft No. 8 .....	50.00
Oct. 21.	Coupling raft No. 9 .....	50.00
		180.00

Season 1893.	1,784 cribs, 18 pieces grub plank in each crib, 32,112 pcs. 2" x 6" x 16'—513,792 ft. at \$1.12½.....	578.01
Season 1894.	2,099 cribs, 18 grub plank to a crib, 37,782 pcs. 2" x 6" x 16'—604,512 ft. at \$1.12½.	680.00
Season 1894.	Lost ten days for overloading raft No. 6..	800.00

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\$3,094.78

76	Bro't forward .....	\$3,094.78
1894.		
July 7.	Raft No. 5 in two pieces above Stillwater bridge; lost four hours in coupling....	49.00
Aug. 1.	Raft No. 6 in three pieces at Hershey's mill, above Bay Town, and at S. & B. mill; lost 12½ hours....	125.00
Aug. 14.	Raft No. 7 lost 6 hours dropping and coupling .....	60.00
Aug. 28.	Raft No. 8 lost 11 hours dropping and coupling .....	110.00
Sept. 17.	Raft No. 9 lost 20 hours dropping and coupling .....	200.00
Oct. 13.	Raft No. 10 lost 12 hours dropping and coupling .....	120.00
	Total .....	<u>\$3,749.73</u>

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## EXHIBIT "A."

Schulenburg &amp; Boeckeler Lumber Company to Jno. McCaffrey.

1893.

Nov. 16. Balance due..... \$1,035.64

1894.

April 17. Running 252 cribs, 26 deep. 2,948,400  
 Deck loading..... 57,300

3,005,700 @ 1.12½ 3,381.44

## Raft I.

April 20. 190 cribs, 26 deep..... 2,223,000  
 2 " 24 " ..... 21,600  
 Deck loading..... 119,040

2,363,640 @ 1.12½ 2,659.09

## Raft II.

May 15. 192 cribs.... 2,242,124  
 Deck loading..... 77,037

2,319,161 @ 1.12½ 2,609.05

## Raft III.

June 3. 224 cribs.... 2,616,182  
 Deck loading..... 75,905

2,692,087 @ 1.12½ 3,028.59

## Raft IV.

June 15. Cribs.... 2,792,475  
 Deck loading..... 99,165

2,891,640 @ 1.12½ 3,253.08

## Raft V.

July 6.	231 cribs . . . . .	2,701,238		
	Deck loading . . . . .	115,568		
		<hr/>		
		2,816,806 @ 1.12½	3,168.90	

## Rafts VI, VII, VIII.

240 cribs	}	. . . . . 5,979,644 @ 1.12½	6,727.10	
120 "				
160 "				

## Raft IX.

248 cribs . . . . .	2,802,666 @ 1.12½	3,152.99	
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		<hr/>	\$29,015.88	
Schulenburg & Boeckeler, cr. by statement . .			26,943.70	

Balance due John McCaffrey . . . . .	\$2,072.18			
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78 This agreement, entered into this sixth day of April, A. D. 1893, by and between Schulenburg and Boeckeler Lumber Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Missouri, and John McCaffrey, of Le Claire, in the State of Iowa, witnesseth.

That said McCaffrey for and in consideration of the sale and conveyance to him by said lumber company of three certain steamboats, viz., "Helen Schulenburg," "Charlotte Boeckeler," and "Robert Dodds," together with all there tackle, apparel and furniture thereon, which sale and conveyance has this day been made for the sum of seventeen thousand five hundred (17,500) dollars, and the said parties covenant and agree to the following :

First. That the said McCaffrey will receive and tow all the rafted lumber said lumber company will furnish to him at or below their mill at Stillwater, Minn., and tow same to the landing owned or occupied by the said lumber company at St. Louis, in the State of Missouri, and there deliver the same to said lumber company, in quantities not exceeding one-half raft at a time (unless said lumber company shall be prepared to receive a larger quantity) in as good order and condition as the same may be received by him at the point where the same is delivered to him for towing. Said McCaffrey shall not be held responsible for any loss or damage to any lumber so delivered to said lumber company for towing, which shall be occasioned by the action of the elements, or unavoidable accident which could not be prevented by the said McCaffrey by the exercise of reasonable diligence.

79 Second. That when any lumber is delivered to said McCaffrey for towing rafts he will tow the same from the point of such delivery to St. Louis aforesaid, and there deliver the same in quantities as aforesaid, without any unnecessary delay and make all reasonable efforts to deliver the same fast enough so as to keep the lumber-pullers of said lumber company in St. Louis aforesaid steadily

employed, low water and the elements excepted, and he will do all the work of towing said lumber and delivering the same as aforesaid by and for the following prices and sum, that is to say.

Third. For all rafts of lumber delivered to said McCaffrey at Stillwater, Minn., one dollar twelve and one-half cents (\$1.12½) per thousand feet, board measure, for the lumber contained in such raft, the amount of lumber (other than lumber that may be deck-loaded) to be estimated as four hundred and fifty (450) feet board measure for each inch in thickness of rafted lumber in each course of cribs sixteen by thirty-two (16 x 32) feet. Said price of one dollar twelve and one-half cents per thousand feet, board measure for the lumber to include all charges for lath-, shingles, pickets, grub and coupling plank, or other lumber product which may be loaded on said raft, except lumber; lumber which is deck-loaded shall be paid for at the rate aforesaid according to the actual scale thereof. It is understood that the said lumber company will not overload the cribs with deck-loading so that the cribs will sink in consequence thereof.

For all rafts of lumber delivered to said McCaffrey for towing pursuant to this agreement, at any point below Stillwater, Minn., a price which shall bear the same proportion to the number of 80 miles from the point of such delivery, to St. Louis, as the sum of one dollar twelve and one half cents per thousand feet board measure bears to the number of miles from Stillwater to St. Louis.

It is further understood that said lumber company shall couple the cribs into the sizes of the rafts as said McCaffrey may direct, and it is also understood that the said lumber company will use all due diligence to keep this lumber afloat at Stillwater, and the rafts shall be fitted up and made ready for the boats.

Said lumber company is to give said McCaffrey the towing of seventy-five million (75,000,000) feet of rafted lumber during the three years first succeeding this contract, and further agrees to give said McCaffrey the towing of all lumber which said company may raft to St. Louis that may run over the seventy-five million feet during the three years first succeeding the date of this contract.

Said McCaffrey shall pay all harbor, wharfage and other charges which may accrue against any lumber delivered to him for towing between the points of such delivery and the point herein specified for the delivery thereof to said lumber company, except in cases where said McCaffrey shall be directed by said lumber company to tie up and leave rafts at points at or near Alton or other places, in which case the said lumber company shall pay all the harbor charges on rafts so tied up at the point where said McCaffrey may be so directed to leave same.

That in case of any damage to or loss of lumber from any raft delivered to said McCaffrey for towing, pursuant to the terms 81 of this agreement, the amount of such damage or loss shall be ascertained and agreed upon at the time of the delivery of the lumber at the landing of said lumber company at St. Louis, Mo., and such damage for loss or breakage shall be paid for by said McCaffrey at the market price of lumber.

If at any time said McCaffrey shall have any lumber in Alton slough, or at any other point in the vicinity of St. Louis, and shall be unable to deliver the same promptly, on being notified so to do by said lumber company, said lumber company may procure any other party or person to tow this lumber from Alton or other points to its landing at St. Louis, aforesaid, and shall be entitled to deduct from the price of towing such lumber the sum of sixty (60) dollars, from each half raft from Alton slough, and a sum proportionate per mile as sixty dollars is to the number of miles from Alton slough to St. Louis, from any other point above Alton slough to St. Louis, from any point above Alton slough.

In the event that said lumber company continues to ship lumber in the raft during the seasons of 1896 and 1897, and give said McCaffrey the towing of an aggregate of one hundred and twenty-five million (125,000,000) feet or over, of rafted lumber during the seasons of 1893 to 1897 inclusive, and at the same price and conditions as in this contract aforesaid, then it is agreed that the said lumber company makes no refund of cash to said McCaffrey. But in the event that said lumber company only continues to ship lumber in the raft during the season of 1896, and discontinues the shipment of lumber during the season of 1897, then said lumber company is to pay said McCaffrey the sum of four thousand five hundred (4,500) dollars. In the event that said lumber company discontinues the running of rafts after the season of 1895, 82 then said lumber company is to refund to said McCaffrey the sum of seven thousand (7,000) dollars.

In view of the fact that George Brasser has been engaged by said lumber company to command the steamer "Robert Dodds" for the season of 1893, it is agreed that said McCaffrey will assume all liabilities on the part of said lumber company towards said Brasser. Said Brasser is to do the same kind of work as any other first-class pilot will do, and shall work as second or head pilot on any boat that said McCaffrey may direct. Said Brasser is to receive sixteen hundred dollars (\$1,600) for the season's work.

Fourth. That all the covenants and agreements of the respective parties hereto herein contained, shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties respectively, as fully and completely as if such heirs, executors, administrators, successors and assigns had been specifically mentioned in connection with each covenant.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the presence of—

\_\_\_\_\_  
\_\_\_\_\_

83 Schulenburg & Boeckeler Lumber Company, *John McCaffrey*, credit.

Cr.

1893.			
Nov.	1.	By cash .....	\$1,200.00
1894.			
March	31.	" " .....	700.00
April	20.	" " .....	600.00
May	15.	" telegrams.....	.95
"	2.	" cash .....	1,000.00
"	15.	" " .....	1,000.00
"	21.	" Theo. Parker .....	60.00
"	25.	" cash .....	2,000.00
June	2.	" " .....	1,000.00
"	4.	" " .....	20.00
"	5.	" shortage & breakage acc't .....	198.93
		" " " " .....	59.40
	16.	" Crown Coal & Tow Co.....	10.00
	19.	" telegrams.....	.50
	20.	" Wm. L. Boeckeler.....	8.00
	20.	" Alton Harbor Co.....	70.56
	26.	" Jack .....	10.00
	26.	" cash .....	1,000.00
July	7.	" Consolidated Coal Co... ..	10.00
	19.	" cash .....	1,500.00
	25.	" wharfage .....	40.65
	28.	" Thor. Parker.....	25.00
Aug.	1.	" cash .....	1,500.00
	7.	" W. L. Boeckeler to J. Mc.....	5.00
	22.	" cash .....	3,000.00
	24.	" shortage and breakage raft V... ..	33.00
	31.	" Stillwater bill ... ..	214.17
			<hr/>
84		Bro't forward.....	\$15,266.16
1894.			
Sept.	5.	By cash .....	2,000.00
	7.	" " .....	100.00
	8.	" " .....	1,800.00
	20.	" telegram.....	.35
	20.	" cash .....	1,000.00
	26.	" wharfage, Dodds, \$13.50; Patience, \$7.35.	20.85
Oct.	11.	" cash .....	1,000.00
	16.	" " .....	4,000.00
	25.	" wharfage... ..	6.95
Nov.	2.	" cash .....	1,000.00
	"	" draft.....	250.00
	12.	" S. & B., Stillwater bill .....	362.45
		" " " " .....	136.94
			<hr/>
Total.....			\$26,943 70

Filed in the circuit court this 19th day of August, A. D. 1895.

WM. McMANUS, *Clerk.*

85        The following is a copy of complainant's replication to  
Schulenburg & Boeckeler Lumber Company :

STATE OF ILLINOIS, }  
Mercer County,        } ss :

In the Circuit Court of Mercer County, Illinois, of the March Term,  
A. D. 1896. In Chancery.

MCCAFFREY

vs.

SCHULENBURG and BOECKELER LUMBER CO. ET AL. }

*The Replication of John McCaffrey, Complainant, to the Answer of  
Schulenburg and Boeckeler Lumber Co.*

This repliant, saving and reserving to himself all and all manner  
of advantage of exception which may be had and taken to the  
manifold errors, uncertainties, and insufficiencies of the answer of  
the said defendant, for replication thereunto saith that — do- and  
will aver, maintain, and prove said bill to be true, certain, and  
sufficient in the law to be answered unto by the said defendant,  
and that the answer of the said defendant is very uncertain, evasive,  
and insufficient in the law to be replied unto by this repliant ; with-  
out this, that any other matter or thing in the said answer contained  
material or effectual in the law to be replied unto and not herein  
and hereby well and sufficiently replied unto, confessed or avoided,  
traversed or denied, is true ; all which matters and things this repli-  
86        ant is ready to aver, maintain, and prove as this honorable  
court shall direct, and humbly pray- as in and by his said  
bill he has already prayed.

PEPPER & SCOTT,

*Solicitor- for Complainant.*

Filed this 18th day of March, 1896.

WM. McMANUS, *Clerk.*

The following is a copy of complainant's replication to the an-  
swer of Knapp, Stout & Co. Company :



STATE OF ILLINOIS, }  
*Mercer County,* } ss:

In the Circuit Court of Mercer County, Illinois, of the March Term,  
 A. D. 1896. In Chancery.

McCAFFREY  
 vs.  
 SCHULENBURG & BOECKELER LUMBER CO. ET AL. }

*The Replication of John McCaffrey, Complainant, to the Answer of  
 Knapp, Stout & Co. Co.*

This repliant, saving and reserving to himself all and all manner  
 of exception which may be had and taken to the manifold errors,  
 uncertainties, and insufficiencies of the answer of the said defendant,  
 for replication thereunto saith that — do- and will aver, maintain,  
 and prove said bill to be true, certain, and sufficient in the law to  
 be answered unto by the said defendant, and that the answer  
 87 of the said defendant is very uncertain, evasive, and insuffi-  
 cient in the law to be replied unto by the repliant; without  
 this, that any other matter or thing in said answer contained ma-  
 terial or effectual in the law to be replied unto, and not herein and  
 hereby well and sufficiently replied unto, confessed or avoided,  
 traversed or denied, is true; all which matter and things this re-  
 pliant is ready to aver, maintain, and prove as this honorable court  
 shall direct, and humbly pray as in and by his said bill he has  
 already prayed.

PEPPER & SCOTT,  
*Solicitor for Complainant.*

Filed this 18th day of March, 1896.

WM. McMANUS, *Clerk.*

The following is a copy of complainant's replication to the an-  
 swer of Tittman and Bronson:

STATE OF ILLINOIS, }  
*Mercer County,* } ss:

In the Circuit Court of Mercer County, Illinois, of the March Term,  
 A. D. 1896. In Chancery.

McCAFFREY  
 vs.  
 SCHULENBURG-BOECKELER LUMBER CO. ET AL. }

*The Replication of John McCaffrey, Complainant, to the Answer of  
 Tittman and Bronson.*

88 This repliant, saving and reserving to him- all and all  
 manner of advantage of exception which may be had and  
 taken to the manifold errors, uncertainties, and insufficiencies of  
 the answer of the said defendant, for replication thereunto saith

that — do and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto (and not herein and hereby well) confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill he has already prayed.

PEPPER & SCOTT,  
*Solicitor for Complainant.*

Filed this 18th day of March, 1896.

WM. McMANUS, *Clerk.*

And afterwards, to wit, on the 16th day of April, the same being one of the regular judicial days of the March term, 1897, of the Mercer county, Illinois, circuit court, when present Hon. John J. Glenn, judge, &c.; William McManus, clerk; George B. Morgan, master in chancery; Cyrus E. Dryden, sheriff, the following decree was received and entered of record in the court in words and figures following, to wit:

89     STATE OF ILLINOIS, {  
          *Mercer County,*     { 88 :

In the Circuit Court, of the March Term, A. D. 1897.

JOHN McCAFFREY, Complainant,	} Bill to Enforce Lien.
<i>vs.</i>	
THE SCHULENBURG & BOECKELER LUMBER	
Company, Knapp, Stout & Co. Company,	
Eugene C. Tittman and David Bronson,	
Assignees of the Schulenburg and Boeckeler	
Lumber Company.	

*Decree Dismissing Bill.*

And now, on this 16th day of April, A. D. 1897, being one of the days of March term, 1897, of the circuit court aforesaid, comes the complainant, by his solicitors, and the defendants, by their solicitors, and the defendants having all filed their several and respective answers to the bill herein and replications filed to the same by the complainant, and this cause coming on for a hearing on the bill of complaint, answers, and replications, and oral and other evidence offered by the respective parties, and the court having heard the evidence and argument of the respective counsel and being now fully advised in the premises, it is therefore ordered, adjudged, and decreed that the complainant's bill be dismissed without preju-

dice to the rights of the parties hereto at complainant's costs, and that the defendants recover their costs and have execution therefor.

90

JOHN J. GLENN, *Judge, &c.*

Filed 16th day of April, 1897.

WM. McMANUS, *Clerk,*  
By R. W. McMANUS, *Deputy.*

And thereupon, on the rendition of said decree by the court, the said complainant prays an appeal to the appellate court, second district, of the State of Illinois, which appeal the court allows upon the complainant filing his bond in the sum of three hundred dollars (\$300.00), with security to be approved by the clerk, together with his certificate of evidence, within thirty days from this date.

And heretofore, to wit, on the 18th day of March, the same being one of the regular judicial days of the March term, 1895, of the Mercer county, Illinois, circuit court, the following proceedings were had and entered of record in this court in words and figures following, to wit:

JOHN McCaffrey	}	
<i>vs.</i>		
SCHULENBURG & BOECKELER LUMBER Com-		1974.
pany, a Corporation; Knapp, Stout & Co. Company, a Corporation; Eugene C. Titt-		To Enforce a Lien.
man and David Bronson, Assignees of Schu-		
lenburg and Boeckeler Lumber Company,		
Insolvent.		

And now, on this day, come the said complainant, by Pepper & Scott, his solicitors, and enters his motion for the appointing of a receiver herein.

91 And afterwards, to wit, on the 2nd day of April, being of the March term, 1895, of the circuit court of Mercer county, Illinois, the following decree was entered of record in this court in words and figures following, to wit:

STATE OF ILLINOIS, }  
Mercer County, } ss:

In Circuit Court, March Term, 1895.

JOHN McCaffrey	}	
<i>vs.</i>		
SCHULENBURG AND BOECKELER LUMBER CO. ET AL.		Order.

Now come the complainant herein, by Pepper & Scott, his solicitors, and Knapp, Stout & Co. Co., by Wise and McNulty and Bassett & Bassett, its solicitors, and this cause coming on to be heard on the motion herein for the appointment of a receiver and upon the cross-

motion of Knapp, Stout & Co. Co., in the alternative either for an order to require complainant to give bond if he retain possession of the property involved in this suit or for an order requiring complainant to surrender the property involved in this suit to Knapp, Stout & Co. Co. upon its entering into bond in sufficient amount, with satisfactory sureties, to pay any lien complainant may have upon such property :

92 And now, upon consideration of such motion and cross-motion, the court, upon consideration thereof and by consent of the parties, orders and adjudges that Knapp, Stout & Co. Co. enter into a penal bond with penalty in the sum of six thousand dollars, payable to complainant herein, with two sufficient sureties, resident of Illinois, one of whom shall be a permanent resident of Mercer county, Illinois, within thirty days from this date and file the same with the clerk of this court, by whom the same shall be approved, conditioned that if Knapp, Stout & Co. Co. shall well and truly pay or cause to be paid to complainant, John McCaffrey, all sums of money for which he has a lien upon the property described in the bill herein as half raft #1, whether such lien on such half raft be established in this or any suit to which said Knapp, Stout & Co. Co. may be defendant, or in a suit on such bond, which said property is now in Boston bay, in Mercer county, Illinois, and is composed of all the lumber, shingles, lath, and pickets referred to in the bill herein as half raft #1, and shall well and truly pay and satisfy all costs as may be adjudged against such Knapp, Stout & Co. Co. in this suit, or in any other suit which complainant may bring against such Knapp, Stout & Co. Co., or on such bond for the collection of the amount for which complainant, John McCaffrey, claims to have a lien upon the property above described, then such bond to be null and void ; otherwise to remain in full force and effect.

93 It is further ordered and adjudged that upon such bond being filed with and approved by the clerk of this court that complainant, upon being notified by such clerk of the filing and approval of such bond, shall surrender the property above described to Knapp, Stout & Co. Co., who shall at the same time make a statement in triplicate showing the property taken ; one copy of which shall then be immediately delivered to complainant, one shall be filed in this court, and the third held by Knapp, Stout & Co. Co.

It is further ordered and adjudged and decreed that the rights of the parties hereto shall in no way be prejudiced by this order or by the complainant surrendering the above-described property in accordance with this order, but all the rights of the parties hereto, including the rights of defendant to object to the jurisdiction of the court, are hereby expressly reserved.

It is further hereby expressly ordered and adjudged that this order shall not in any way prejudice the rights of the parties herein as to facts material to the determination of this cause, and that in case complainant shall at any time hereafter bring any other suit to enforce the lien which he claims on the property included in the half raft #1, such suit shall be, and this suit shall be, in all

things determined as though he had not surrendered possession under this order, and his right to a lien on such half raft shall in nowise be prejudiced by his compliance with this order, but all rights that he has a lien are hereby expressly reserved and may be enforced in a suit against said Knapp, Stout & Co. Co. precisely as though he had not under this order surrendered possession of such half raft, but in any such suit hereafter brought complainant, upon pleading and proving this order, shall have the same right

94 to proceed to decree or judgment against Knapp, Stout & Co. Co. as though he, complainant, still continued in possession of such property as he had at the time of the institution of this suit.

It is further ordered and adjudged that this order shall not be construed as a confession by Knapp, Stout & Co. Co. that complainant is rightfully in possession of the half raft in controversy, or as a confession that complainant had possession of such property when this suit was brought; nor is it in any way an adjudication by this court that any one was or is rightfully in possession of such property, the question of possession being left wholly undetermined by this court.

H. BIGELOW, *Judge*.

Filed in the circuit court this 2nd day of April, 1895.

WM. McMANUS, *Clerk*.

And afterwards, to wit, on the 17th day of March, the same being one of the regular judicial days of the March term, 1896, of the Mercer county, Illinois, circuit court, when present Hon. John J. Glenn, &c.; William McManus, clerk; James M. Brooks, State's attorney; Cyrus E. Dryden, sheriff; George B. Morgan, master in chancery, the following proceedings were had and entered of record in this court in words and figures following, to wit:

95	JOHN McCaffrey	}	1974. To Enforce Lien.
	<i>vs.</i>		
SCHULENBURG AND BOECKELER LUMBER	Company <i>et al.</i>		

And now, on this day, come the parties hereto, by their solicitors, respectively, and thereupon the hearing of this cause by the court is commenced.

And afterwards, to wit, on the 12th day of March, 1896, being one of the regular judicial days of the March term, 1896, of the circuit court of Mercer county, Illinois, the following proceeding- were had and entered of record in this court in words and figures following, to wit:

JOHN McCaffrey  
 vs.  
 SCHULENBURG AND BOECKELER LUMBER  
 Company *et al.* } 1974. To Enforce Lien.

And now, on this day, come again the parties hereto, by their solicitors, respectively, and thereupon the hearing by the court is resumed.

And afterwards, on the same day, the court, having heard all the evidence adduced and the arguments of counsel, takes this cause under advisement.

96 And afterwards, to wit, on the 24th day of November, the same being one of the regular judicial days of the November term, 1896, of the Mercer county, Illinois, circuit court, the following proceedings were had and entered of record in this court in words and figures following, to wit:

JOHN McCaffrey  
 vs.  
 SCHULENBURG AND BOECKELER LUMBER COM-  
 pany *et al.* } No. 1974. Bill to  
 Enforce Lien.

And now, on this day, come again the parties hereto, by their solicitors, respectively, and thereupon the said complainant enters his motion for a new hearing herein.

And afterwards, to wit, on the 16th day of April, the same being one of the regular judicial days of the March term, 1897, of the Mercer county, Illinois, circuit court, the following decree was filed and entered of record in this court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:  
 Mercer County,

In the Circuit Court, of the March Term, A. D. 1897.

JOHN McCaffrey, Complainant,  
 vs.  
 THE SCHULENBURG & BOECKELER LUMBER  
 Company, Knapp, Stout & Co. Company,  
 Eugene C. Tittman and David Bronson,  
 Assignees of the Schulenburg and Boeck-  
 eler Lumber Company. } Bill to Enforce Lien.

97 *Decree Dismissing Bill.*

And now, on this 16th day of April, A. D. 1897, being one of the days of the March term of the circuit court aforesaid, comes the complainant, by his solicitors, and the defendants, by their solicitors, and the defendants having all filed their several and respective

answers to the bill herein and the replication filed to the same by the complainant, and this cause coming on for a hearing on the bill of complaint, answers, and replications, and oral and other evidence offered by the respective parties, and the court having heard the evidence and argument by the respective counsel and being now fully advised in the premises, it is therefore ordered, adjudged, and decreed that the complainant's bill be dismissed without prejudice to the rights of the parties hereto, at complainant's costs, and that the defendants recover their costs and have execution therefor.

JOHN J. GLENN, *Judge, &c.*

Filed 16th day of April, 1897.

WM. McMANUS, *Clerk,*  
By R. W. McMANUS, *Deputy.*

And thereupon, on the rendition of said decree by the court, the said complainant prays an appeal to the appellate court, second district of the State of Illinois, which appeal the court allows upon the said complainant filing his bond in the sum of three hundred dollars (\$300.00), with security to be approved by the clerk, together with his certificate of evidence, within thirty days from this date.

98      STATE OF ILLINOIS, } ss:  
            *Mercer County,* }

In the Circuit Court of said County, to the March Term, A. D. 1896.

JOHN McCaffrey	}	Action to Enforce Lien.
vs.		
THE SCHULENBURG & BOECKELER LUM- ber Co. <i>et al.</i>		

Appearance for the complainant: Messrs. Pepper & Scott and J. M. Brook.

Appearance for the defendant: Messrs. Bassett & Bassett and Wise and McNulty.

Heard before Hon. John J. Glenn, presiding, March 17th and 18th, 1896.

JOHN C. McCaffrey, the complainant, called on his own behalf, being first duly sworn, testified as follows:

Q. What is your name?

A. John McCaffrey.

Q. Where do you reside?

A. Davenport, Iowa.

Q. How long have you lived there?

A. About two years.

Q. Where did you reside prior to that?

A. Le Claire, Iowa.

Q. How long did you live there?

A. Since 1857.



Q. What was your business in the spring of 1893?

A. I was steamboating. My business was with the Schulenburg and Boeckeler Lumber Co., taking their lumber from Stillwater to St. Louis under a contract with them.

Q. Did you attend to any other business at any time for anybody else?

A. Yes, sir.

Q. How many years have you been steamboating?

A. Yes; I have been steamboating since 1865.

99 Q. I wish you would look at that contract and state whether or not that is the contract you entered into with the Schulenburg and Boeckeler Lumber Co.

A. Yes; that is the contract we made in 1893—in the spring of 1893.

Counsel for the complainant offers the contract of April 6th, 1893, between the Schulenburg and Boeckeler Lumber Co. and J. McCaffrey; which contract is in the words and figures following, to wit, and marked Exhibit "A":

This agreement, entered into this sixth day of April A. D. 1893, by and between Schulenburg and Boeckeler Lumber Company, a corporation created, organized and existing under and by virtue of the laws of the State of Missouri, and John McCaffrey, of Le Claire, in the State of Iowa, witnesseth:

That said McCaffrey, for and in consideration of the sale and conveyance to him by said lumber company of three certain steamboats, viz., "Helen Schulenburg," "Charlotte Boeckeler" and "Robert Dodds," together with all their tackle, apparel and furniture thereon, which sale and conveyance has this day been made for the sum of seventeen thousand five hundred (17,500) dollars, and the said parties covenant and agree to the following:

First, that the said McCaffrey will receive and tow all the rafted lumber said lumber company will furnish to him at or below their mill at Stillwater, Minn., and tow same to the landing owned or occupied by the said lumber company at St. Louis, in the  
100 State of Missouri, and there deliver the same to said lumber company in quantities not exceeding one-half a raft at a time (unless said lumber company shall be prepared to receive a larger quantity) in as good order and condition as the same may be received by him at the point where the same is delivered to him for towing. Said McCaffrey shall not be held responsible for any loss or damage to any lumber so delivered to said lumber company for towing, which shall be occasioned by the action of the elements, or unavoidable accidents which could not be prevented by the said McCaffrey by the exercise of reasonable diligence.

Second: That when any lumber is delivered to said McCaffrey for towing rafts he will tow the same from the point of such delivery to St. Louis aforesaid, and there deliver the same in quantities as aforesaid, without any unnecessary delay and make all reasonable efforts to deliver the same fast enough so as to keep the lumber-pullers of said lumber company in St. Louis aforesaid

steadily employed, low water and the elements excepted, and he will do all the work of towing said lumber and delivering the same as aforesaid by and for the following prices and sum, that is to say.

Third: For all rafts of lumber delivered to said McCaffrey at Stillwater, Minn., one dollar twelve and one-half cents (1.12½) per thousand feet, board measure, for the lumber contained in such raft, the amount of lumber (other than lumber that may be deck-loaded), to be estimated as four hundred and fifty (450) feet board measure for each inch in thickness of rafted lumber in each course of cribs sixteen by thirty-two (16 x 32) feet.

101 Said price of one dollar twelve and one-half cents per thousand feet board measure for the lumber to include all charges for lath, shingles, pickets, grub and coupling plank, or other lumber product which may be loaded on said raft, except lumber; lumber which is deck-loaded shall be paid for at the rate aforesaid according to the actual scale thereof. It is understood that the said lumber company will not overload the crib with deck-loading so that the crib will sink in consequence thereof.

For all rafts of lumber delivered to said McCaffrey for towing pursuant to this agreement, at any point below Stillwater, Minn., a price which shall bear the same proportion to the number of miles from the point of such delivery to St. Louis, as the sum of one dollar twelve and one-half cents per thousand feet board measure bears to the number of miles from Stillwater, Minn., to St. Louis.

It is further understood that said lumber company shall couple the cribs into the sizes of the rafts as said McCaffrey may direct, and it is also understood that the said lumber company will use all due diligence to keep this lumber afloat at Stillwater, and the raft shall be fitted up and made ready for the boats.

Said lumber company is to give said McCaffrey the towing of seventy-five million (75,000,000) feet of rafted lumber during the three years first succeeding the date of this contract and further agrees to give said McCaffrey the towing of all lumber which said company may raft to St. Louis that may run over the seventy-five million feet during the three years first succeeding the date of this contract.

102 Said McCaffrey shall pay all harbor, wharfage and other charges which may accrue against any lumber delivered to him for towing between the points of such delivery and the point herein specified for the delivery thereof to said lumber company, except in cases where said McCaffrey shall be directed by said lumber company to tie up and leave rafts at points at or near Alton or other places, in which case the said lumber company shall pay all the harbor charges on the rafts so tied up at the point where said McCaffrey may be so directed to leave same.

That in case of any damage to or loss of lumber from any raft delivered to said McCaffrey for towing, pursuant to the terms of this agreement, the amount of such damage or loss shall be ascertained and agreed upon at the time of the delivery of the lumber at the landing of said lumber company at St. Louis, Mo., Mo., and such

damage for loss or breakage shall be paid for by said McCaffrey at the market price of lumber.

If at any time said McCaffrey shall have any lumber in Alton slough, or any other point in the vicinity of St. Louis and shall be unable to deliver the same promptly, on being notified so to do by said lumber company, said lumber company may procure any other party or person to tow this lumber from Alton or other points to its landing at St. Louis, aforesaid, and shall be entitled to deduct from the price of towing such lumber the sum of sixty dollars, from each half raft from Alton slough, and a sum proportionate per mile as sixty dollars is to the number of miles from Alton slough to St. Louis, from any point above Alton slough.

In the event that said lumber company continues to ship lumber in the raft during the seasons of 1896 and 1897 and give said  
103 McCaffrey the towing of an aggregate of one hundred twenty-five million (125,000,000) feet or over, of rafted lumber during the seasons of 1893 to 1897 inclusive, and at the same price and conditions as in this contract aforesaid, then it is agreed that the said lumber company makes no refund of cash to said McCaffrey. But in the event that said lumber company only continues to ship lumber in the raft during the season of 1896, and discontinues the shipping of lumber during the season of 1897, then said lumber company is to pay said McCaffrey the sum of four thousand five hundred (\$4,500) dollars. In the event that the said lumber company discontinues the running of rafts after the season of 1896, then said lumber company is to refund to said McCaffrey the sum of seven thousand (\$7,000) dollars.

In view of the fact that George Brasser has been engaged by said lumber company to command the steamer "Robert Dodds" for the season of 1893, it is agreed that said McCaffrey will assume all liabilities on the part of said lumber company towards said Brasser. Said Brasser is to do the same kind of work as any other first-class pilot will do, and shall work as second or head pilot on any boat that said McCaffrey may direct. Said Brasser is to receive sixteen hundred dollars (1,600.00) for the season's work.

Fourth. That all the covenants and agreements of the respective parties hereto herein contained, shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties respectively, as fully and completely as if such heirs, executors, administrators, successors and assigns had been specifically  
104 mentioned in connection with each covenant.

In witness whereof, the parties hereto have hereunto set their hands the day and the year first above written.

SCHULENBURG AND BOECKELER  
LUMBER CO.,

By A. BOECKELER, *President*.  
JOHN McCAFFREY.

In the presence of—

DAN'L GEARY.

WILLIAM L. BOECKELER.

Q. Did you enter upon the performance of that contract?

A. Yes; we started to run and ran two seasons through.

Q. That was for 1893 and 1894?

A. Yes, sir.

Q. How many boats did you use in doing that?

A. We had sometimes three boats, counting the bow boat; we had three boats in the work.

Q. Explain what a bow boat is.

A. We take a tow through and put on a bow boat—on the head, crosswise.

Q. You mean ahead of the raft?

A. Yes; to guide the raft.

Q. While engaged in that business with these boats did you do any business with the boats except what you did under this contract?

A. Yes; we did sometimes.

Q. You didn't carry freight generally?

A. We carried no freight; no, sir.

Q. What was the nature of the other business you did that you speak of?

A. We went around on the Tennessee river and got some barges with ties with the Boeckeler one trip, and the Boeckeler she met us at Cairo, and we came down the Tennessee river one trip.

Q. Except for this, how did you come to do that? Was a special contract made with the steamboat?

A. We had nothing else for these boats to do. They were laying up and we took this work. We had nothing else for these two boats to do. I had the Robert Dodds working on the contract.

Q. You didn't engage with these boats in the carrying business generally?

A. No; that is the only thing we done. We ran a few excursions with the Boeckeler.

Q. That would be under a special contract with the steamboat?

A. No; sometimes we made a contract with parties and sometimes we would run our own excursions.

Q. You didn't use these boats running them down the river, carrying freight the same as packets do?

A. No; we didn't do that.

Q. This raft involved in this suit is described in the bill as raft No. 10. Do you remember the circumstances of this raft being brought down the river—that is, involved in this suit?

A. Do I remember the raft?

Q. Yes.

A. Yes, sir.

Q. Prior to the time the raft started from Stillwater, did you receive a letter from the Schulenburg and Boeckeler Lumber Co. with reference to it?

A. Before the raft started down the river?

Q. Yes.

A. I think I did. I received some after the raft started. I received letters all the time.

Q. Look at this letter dated October 3rd, 1894.

A. Yes; I received that letter of October 3rd, 1894.

106 Counsel for complainant offers in evidence the letter last above referred to, and which letter is in the words and figures following, to wit, and marked Complainant's Exhibit "B: "

STILLWATER, MINN., Oct. 3d, 1894.

Mr. John McCaffrey, Le Claire, Iowa.

DEAR SIR: Replying to yours of the 30th ult., dated from Chicago, as advised you in a previous letter, we expect to have a 14-string raft, 18 long, completed about the 8th inst. We expect to close the season with this raft, so far as sending out lumber from here. This raft we want taken through to St. Louis unless we instruct you differently. We would advise that you be here with a boat to take the raft out as soon as it is completed, so that there will be no delay in getting it to St. Louis. We will wire you next Friday or Saturday just when we will have a raft of the size named ready.

Your-truly,

SCHULENBURG & BOECKELER  
LUMBER CO.,

Per E. L. HOSPES, *V. Pres.*

Q. In response to that letter, did you send a boat to Stillwater?

A. I suppose so.

Q. Did you send a boat to Stillwater?

A. Yes; of course we did.

Q. After that, after the boat had gone up, did you receive any communication from the Schulenburg & Boeckeler Lumber Co. with reference to what should be done with that raft?

A. Yes; I received a letter from the Schulenburg and Boeckeler Lumber Co.

107 Q. Look at this letter, which I now hand you, dated October 20th, 1894, and state whether or not that is the letter.

A. Yes; that is the letter I received from Schulenburg & Boeckeler Lumber Co.

Counsel for complainant offer in evidence the letter last above referred to, marked Complainant's Exhibit "C," and which letter is in the words and figures following, to wit:

ST. LOUIS, MO., — 20th, 1894.

J. McCaffrey, Esq., Le Claire, Io.

DEAR SIR: We have yours of the 17th inst. and note contents. Desire to say that you must have the raft here within the next seven or eight days, and you must see that you make no delay in delivering this, as the season is near the end. We therefore suggest that you run one-half raft straight through to our landing instead of double-tripping. There will be too much time consumed in doing

this, and the understanding with you and our Mr. Hospes was that you were to have this raft here before the first of Nov. We can stand no delay, and therefore please see that you get the raft here in time.

Very truly yours,

SCHULENBURG & BOECKELER  
LUMBER CO.  
WM. L. BOECKELER.  
V.

We cannot stand another interruption in our business; the men will become scattered and the pulleys will be prolonged into the cold weather. It is necessary therefore that you be here on time. Why did you wait so long, so as to get the largest raft of the whole lot that you have run? This delay, if any, will rest on you.

108 Q. When you received that letter, where was the raft, above or below Le Claire?

A. It was above Le Claire, I think.

Q. Do you remember how soon after it got to Le Claire?

A. It got to Le Claire—I don't remember just exactly.

Q. How is that?

A. I don't remember when it got to Le Claire.

Q. Did you see the boat when it came down the river?

A. Yes, sir.

Q. What boat had charge of that raft?

A. The steamer Dodds and the steamer Duke.

Q. The Duke was the bow boat?

A. Yes, sir.

Q. Who was in charge of the steamer?

A. George Tromley, Jr.

Q. Who was the clerk?

A. My boy, Jack McCaffrey.

Q. Was either of your other sons on that boat?

A. Yes; Frank was on there.

Q. Where was it that you saw the captain, at Le Claire or Davenport?

A. At Davenport.

Q. What instructions did you give him with reference to laying up that raft at that time?

A. I had a talk with him with reference to laying it up. I said there were kicking from below about the raft going down the river so slow; they didn't take into consideration the water was low.

Q. What directions did you give him about laying it up?

A. I said he had better lay up one half of the raft in Boston bay and go ahead with the other half to St. Louis, and get in there as quick as he could.

Q. At that time had you received any letter from Schulenburg & Boeckeler Lumber Co. except this one that has been read in evidence here?

A. No, sir.

Q. That is the only letter you had received with reference to the matter before that time?

109 A. That is the only letter I had received.

Q. Now, what was the stage of the water in the Mississippi river at that time?

A. I don't remember exactly, but it was very low; it was a low stage of water; it must have been to zero.

Q. What effect did that have on the business of rafting lumber?

A. It takes you three or four times as long to make a trip when it is dead low water.

Q. Now, some time after that, did you receive a communication from Schulenburg & Boeckeler Lumber Co. with reference to what should be done with this raft?

A. Yes, sir.

Q. Look at this telegram, dated October 29th, 1894. Did you receive that?

A. Yes; I received that telegram.

Counsel for complainant offers in evidence telegram last referred to, and the same is marked Complainant's Exhibit "D," and is in the words and figures following, to wit:

"10.30 A. —., Oct. 29, 1894.

Dated St. Louis, Mo.

To John McCaffrey, 1005 Brady St.

Winter raft under way in canal otherwise any safe harbor below.  
SCHULENBURG AND BOECKELER L'B'R CO."

Q. Did you communicate that information to the boat?

A. Yes, sir.

Q. Look at the telegram I now hand you and state whether or not that is the one sent by you.

A. Yes; I sent that telegram.

110 Counsel for complainant offers in evidence the telegram last referred to, and the same is marked Complainant's Exhibit "E," and is in the words and figures following, to wit:

Received at 6.22 p. —., Oct. 29, 1894.

Dated Davenport, Io., 29.

To Capt. George Tromley, c/o Quincy bridge:

Lay up raft in Quincy bay for winter and lay boats in Boston with raft.

JOHN McCAFFREY.

Q. Afterwards, did you receive any further communication with reference to what should be done with that raft?

A. Yes; I got another telegram from them.

Q. That telegram you have not been able to find?

A. Yes; I think we have it.

Q. Did you communicate the substance of that telegram to the boat?



A. Which telegram?

Q. The one sent for you to tie up the raft.

A. That was sent to the boat.

Q. After that was sent to the boat, did you communicate with the boat; after that telegram was sent to the boat, did you communicate with the boat?

A. Yes, sir.

Q. Is this the telegram?

A. Yes; that is the telegram I sent to the boat, dated October 29th, 1894.

111 Counsel for the complainant offers the telegram last above referred to of John McCaffrey to Captain George Trombley, Jr., dated October 29th, 1894, care of the steamer Robert Dodds; which telegram is marked Complainant's Exhibit "F," and is in the words and figures following, to wit:

Received at —, Oct. 29, 1894.

Dated Davenport, Ia., 29.

To Captain George Trombley, Jr., cr. steamer Dodds:

Go on to St. Louis with raft if company wants it.

JOHN McCAFFREY.

Counsel for complainant offers telegram, dated St. Louis, Oct. 29th, 1894, to the steamer Robert Dodds, care of Thomas Adams, Quincy, Illinois, being in words and figures following, to wit:

"Come on with the raft," and signed "Schalenburg & Boeckeler Lumber Co."

Q. I will ask you how these rafts are constructed—how they are made.

A. The rafts or cribs?

Q. The cribs, then.

A. The cribs are made on two pieces 16 by 16. There is 2 by 8, 3 of them; then three more crosswise on top of them, and the lumber is filled in between, and then on top it makes courses of lumber and is secured by grub plank. On top of the crib is placed lumber. Most of them are made the same way; some of them are made of inch lumber; mostly are made with 2 by 8. Running, as I have described them, there are placed on top of them what is called the top deck-loading dimension lumber—laths, pickets, and shingles.

112 Q. How is the bottom of the crib made, in the first place?

A. There is three grub planks one way and three the other way.

Q. And on the top of that lumber is piled?

A. It is filled in; it makes a space two feet or 21 inches deep.

Q. How high is the crib made above the grub plank on the bottom?

A. It is made as deep as you want it.

Q. Do you know the depth of this particular raft?

A. I think from 22 up to 26 inches.

Q. And the lumber is piled on top of that foundation and grub plank in courses on top in the same way?

A. Nearly all of it.

Q. How is the grub plank on top connected with that on the bottom?

A. There is a hole bored in the grub plank from the top to the bottom and grub pins run through and holds them together, and the lumber is piled inside that and is rafted inside of that on the outside cribs and they are the same in the middle of the cribs.

Q. Two of them are put together?

A. They are put together, making a crib 16 by 32.

A. They stretch them out lengthwise 32 feet and run them out as long as they want to. They run them out into rafts or — 30 to 40 cribs long.

Q. Now, in rafting lumber in this contract did you carry any grub plank aside from that you have spoken of which was used in building cribs?

A. Yes; sometimes there would be some grub plank on there.

Q. Where was that carried?

A. It was carried to St. Louis.

Q. On what part of the raft?

A. On the top of the raft—on the deck.

Q. It was part of the deck-loading?

A. Yes, sir.

113 Q. What was it carried that way for?

A. It was carried the same as any other deck-loading.

Q. Was it carried any time for any particular purpose?

A. Yes; it was carried there to be used in case of a break-up to tie the raft together again.

And being cross-examined by counsel for the defendant, Mr. Wise, the witness, JOHN MCCAFFREY, testified as follows:

X Q. You were not with the boat at all were you, Captain?

A. No, sir.

Q. X. This so-called freight business that you state that you carried on over the Tennessee river, that was in the winter?

A. Yes; it was winter.

Q. X. Then you did nothing else in the world with these boats, nothing except rafting—that is all you did with these boats?

A. We carried excursions with them—we ran excursions with them.

Q. X. Was that in the rafting season?

A. Yes, sir.

Q. X. Was that with the other boats or with these boats?

A. Not the Dodds; no, sir.

X Q. Did you do any carrying business at any time?

A. On the Dodds?

— Q. Yes.

A. We had people on there; we didn't charge them. My folks went up on the boats at different times.

X Q. Did you do any business in that way?

A. No; not in the way of business, unless you call that business.

X Q. You mean only your own folks?

A. They had folks with them to make a trip on the boat. We never got any money out of that; it was always a loss.

114 X Q. These telegrams that have been introduced in evidence, some of them were sent to you, and then you telegraphed afterwards, as has been shown, to the captain of the steamboat?

A. There was none of them, I think.

X Q. I believe you said you ran excursion parties. How many of these excursion parties did you have?

A. On what?

X Q. On the steamboat you said you was running.

A. What boat?

X Q. Any of them.

A. We had quite a number on the Schulenburg.

X Q. The Schulenburg is one of these boats?

A. Yes, sir.

X Q. How many did you have on the Dodds?

A. None whatever.

X Q. Did you have any on the Boeckeler?

A. Yes; we took a few on the Boeckeler.

X Q. Now, which one of these boats did you go around on the Tennessee river with? Was it the boats we have been speaking about?

A. I went around there on the Boeckeler to bring out some ties.

X Q. Was it for the purpose of making money out of them?

A. Of course. We had no work for them—nothing else for them to do—and we chartered the boat. I had the boat chartered to go to the Tennessee river.

X Q. Did you tow anything else on the Mississippi river?

A. Did I tow anything?

X Q. Yes.

A. I don't remember towing anything.

X Q. During these two years did you do anything else?

A. It don't seem to me that I did.

X Q. You are not positive one way or the other?

A. No, sir.

X Q. Didn't you tow barges of ties?

A. We towed barges of ties—three barges. The boat was chartered to go up the Tennessee river.

X Q. Did you tow any on the Mississippi river?

115 A. Yes; excursion parties; that is all.

X Q. Now, when you started from Stillwater with this raft called No. 10, did you have to divide the raft anywhere?

A. When we started from Stillwater?

X Q. From Stillwater down did you divide it at any time?

A. We had to divide it at bridges.

X Q. How would you do that?

A. Separate it in two, fore and aft.

X Q. How many times was it divided from Stillwater to Boston bay?

A. Several times.

X Q. How many times, as much as 5 or 6?

A. Well, starting at Stillwater, at Hudson there is a bridge, and there it was separated; then there is one at Prescott, and it was separated there; another at Reed's landing, and it was separated there; two at Winona, and it was separated there; at La Crosse, it was separated there twice, and from there down to Dubuque it was separated there, and down there, Sabula, and it was separated there, and then at Clinton the raft was separated there, and then at Rock Island it was separated once there, and that is all, I believe.

X Q. About a dozen times, all together?

A. Yes; I guess so.

X Q. When you split the raft would it be cut off before you would tow down a part?

A. I suppose that is the way it was done; I don't know how they ran the raft.

X Q. They would run each part down separately?

A. I suppose so.

X Q. That is the way they would have to run out the raft, is it not?

A. No, sir; they could put one piece ahead of the other when the river was suitable.

116 X Q. When the river was wide they could run it through the way you mention?

A. Yes, sir.

And being further examined by counsel for the plaintiff, the witness, JOHN McCaffrey, testified as follows:

Q. This time the boat was upon the Tennessee river, you had chartered it to somebody?

A. Yes; to parties in Minneapolis.

HENRY McCaffrey, a witness called on the part of the complainant, being first duly sworn, testified as follows:

Q. What is your name?

A. Henry McCaffrey.

Q. Where do you reside?

A. Davenport, Iowa.

Q. What is your occupation?

A. I am an attorney up there.

Q. What was you doing in the fall of 1894?

A. I was with my father in Chicago, and went from there to Stillwater, and came from Stillwater to Davenport with the Robert Dodds with raft No. 10.

Q. With this raft No. 10?

A. Yes, sir.

Q. At Davenport you left the boat?

A. Yes, sir.

Q. Were you present when this raft was taken in charge by the Robert Dodds at Stillwater?

A. Yes, sir.

Q. Who counted the raft to ascertain what quantity of lumber it contained?

A. A man from the office was there, from the Schulenberg and Boeckeler Lumber Company's office, and myself. The man from the Schulenberg and Boeckeler Lumber Company's office counted the cribs.

117 Q. Were you given a statement by him of the quantity of lumber in that raft?

A. Yes; here is the statement he gave me.

Q. That is correct?

A. That is account of the contents of the raft.

Counsel for complainant offers in evidence the statement last above referred to, and the same is marked Complainant's Exhibit "H," and is in the words and figures following, to wit:

118 COMPLAINTANT'S EXHIBIT "H."

252 timbers; 4,207 shingles; 203 pickets; 7,337 lath.

STILLWATER, MINN., Oct. 13, 1894.

Rec. of Schulenburg & Boeckeler Lumber Co., in good condition and running order, 288 cribs of lumber and deck-loading as follows, viz:

272 cribs, 24 courses deep.....	2,937,600
2 " 23 " " .....	20,700
2 " 23½ " " .....	12,150
3 " 24 " " .....	32,400
9 " 25 " " .....	101,250
Deck-loading .....	3,113,100
113,970 ft. timbers, 497 pec.....	113,970
11,300 " loose lumber .....	11,300
	<hr/>
	3,238,370

734,950 lath....	14,699 bdl.
1,994,000 shingles.....	7,976 "
8,965 pickets .....	371 "

119 Q. Look at this memorandum which I show you, and I will ask you, if that is the memorandum made by you, what the towage of that raft would be worth from Stillwater to St. Louis under your father's contract.

A. Yes; that is a memorandum I made.

Q. State what it would be worth, aside from the grub plank in the crib

A. \$3,643.17.

— Figuring the grub plank in the cribs at the same rate, what would they be worth?

A. \$93.31.

Counsel for the complainant offers in evidence the statement last above referred to, and the same is marked Complainant's Exhibit "J," and is in the words and figures following, to wit:

## EXHIBIT "J."

Schulenburg & Boeckeler to John McCaffrey, Dr.

Towing raft No. X, Stillwater to St. Louis,	
3,238,370 ft., at 1.12 $\frac{1}{2}$ .....	3,643.17
Grub plank on same, 288 cribs, 18 each—5,184	
pieces, 2" x 6" x 16"—8,294 ft., at 1.12 $\frac{1}{2}$ . ...	93.31
	<hr/> 3,736.48

120 And being cross-examined by counsel for the defendant, the witness, HENRY MCCAFFREY, testified as follows:

X Q. Who made this piece of paper?

A. The man I counted the raft with, Mr. Warren.

X Q. Did you see him make it?

A. He brought this down to me. He brought one just like this, which I signed and gave to him, and I kept this copy.

X Q. You signed one and he kept it?

A. Yes, sir.

X Q. These figures were on there at that time?

A. No, sir.

X Q. These were put on afterwards?

A. Yes, sir.

X Q. Whose figures are these?

A. I don't know; they are not mine. Some figures were put on after this was given to me.

X Q. The figures in pencil which appear in the middle of this paper, were they there at the time it was signed?

A. It was Mr. Warren told me they didn't have time at the office, and we got through counting the raft 15 or 20 minutes before the raft was taken away.

X Q. Were these on there at the time?

A. Yes, sir.

X Q. The same figures appear now in pencil?

A. Yes, sir.

X Q. This memorandum that you have figured out here was, you say, for towing the raft No. 10 from Stillwater to St. Louis. Is that the number of feet in the raft?

A. Yes, sir.

X Q. What does this other one represent, the grub plank?

A. The grub plank in the raft.

X Q. In the raft or on top of it?

A. In the raft.

X Q. In the raft it is, and not on top?

A. Yes, sir.

X Q. You make no charge in this estimate for any lath or shingles or pickets of any kind?

121 A. No, sir; there is no charge in that.

X Q. Why do you put the grub plank in?

A. Why, because it is lumber run in the raft.

X Q. Why don't you put the shingles and lath and pickets in?

A. Because according to contract lath and shingles were to be carried free.

X Q. But at the rate of \$1.12½ a thousand you charge in the grub plank, and that is what you refer to?

A. It is rafted in and is part of the raft.

X Q. You charge nothing for the lath, shingles, and pickets?

A. No, sir.

X Q. But you charge for the grub plank?

A. Yes; grub plank rafted in the raft.

X Q. Is that what you call grub-coupling plank?

A. There is a coupling plank that runs fore and aft between the cribs.

X Q. They hold them together, don't they?

A. Yes, sir.

X Q. The coupling plank and the cribs?

A. Yes, sir.

X Q. At the rates agreed upon, \$1.12½ for lumber, you charge nothing for lath, shingles, or pickets, but for the grub plank and other lumber which might be loaded on you charge for?

A. Yes, sir.

X Q. Now, I see you don't make any charge on there for anything else except the grub plank, but you charged for the grub plank?

A. Yes, sir.

X Q. I mean in this second bill of \$93?

A. Yes, sir.

And being further examined by counsel for the complainant, the witness, HENRY McCaffrey, testified as follows:

122 Q. I will ask you whether, in the first place, had you been on either of these boats at any time during the time your father has been working for Schulenburg & Boeckeler Lumber Co.

A. I made one trip on the Schulenburg.

Q. Do you know whether or not grub and coupling plank are carried on top of these rafts—extra grub and coupling plank?

A. Extra grub and coupling plank used in coupling them together.

Q. They were to be used in coupling the raft together?

A. Yes, sir.

Q. Describe what a coupling plank is.

A. They are usually 12 by 2, but they vary in width, and are 16 feet long—14 to 16 to 18 feet long.

Q. Which season was it you made your trip on the Schulenburg?

A. I made one trip in 1894.

Q. In what capacity?

A. I was on there as clerk.



Q. On that trip you made with the Schulenburg was any raft laid up in Boston bay ?

A. No, sir.

Q. Any part of a raft ?

A. No, sir.

And being further cross-examined by counsel for the defendant, the witness, HENRY McCAFFREY, testified as follows :

Q. X. The raft was taken straight through to St. Louis, was it ?

A. No; we delivered the raft to the steamer Robert Dodds.

Q. X. Where did you deliver it to the Robert Dodds ?

A. We met her at Fulton, and we towed one half to Keokuk and the Robert Dodds took it from there.

123 Q. X. The Robert Dodds took the whole raft from Keokuk ?

A. Yes, sir.

JOHN McCAFFREY, JR., a witness called on the part of the complainant, being first duly sworn, testified as follows :

Q. Where do you reside ?

A. In Davenport, Iowa.

Q. Your name is John McCaffrey, Jr. ?

A. Yes, sir.

Q. You are a son of the complainant ?

A. Yes, sir.

Q. Do you remember the circumstance of that raft No. 10 being brought down the river in 1894 ?

A. Yes, sir.

Q. What was you doing then ?

A. I was clerking on the Robert Dodds.

Q. Where did you join the steamer ?

A. I had been on her all summer.

Q. You had been on the steamer all summer ?

A. Yes, sir.

Q. Did you make every trip she made during the season ?

A. Yes, sir.

Q. During the preceding season of 1893 what had been your business ?

A. I was clerk on the same boat.

Q. You was clerk on the same boat ?

A. Yes, sir.

Q. During 1893, during the season of 1893 and the season of 1894, had your father, with any boat he was running, laid up any raft in Boston or Sturgeon bay prior to that time ?

A. No, sir.

Q. Had you had a raft laid up during the preceding winter any place ?

A. Yes, sir.

Q. Where was it laid up ?

A. At Cat Tail slough.

Q. Where is Cat Tail slough ?

A. One and a half miles below Clinton, Iowa, on the Illinois side.

124 Q. Now, in the spring of 1894, do you remember the circumstance of laying a raft at a certain place?

A. Yes, sir.

Q. Where was that laid up?

A. In Alton slough.

Q. In Alton slough?

A. Yes, sir.

Q. When the same boat reached New Boston, what was done?

A. In the fall of 1894?

Q. Yes; with this raft No. 10.

A. We went in to leave it there.

Q. What did you do with it?

A. We got stuck outside on the bar, and we pulled off and took her in and laid it alongside the main shore there.

Q. That is the Illinois shore—the main shore of Illinois?

A. Yes; we put it in the bay.

Q. Which direction from the town of New Boston?

A. Up the river.

Q. How far?

A. I don't think over a mile.

Q. There is a little fishing house or two that stands up where the raft was?

A. Yes, sir.

Q. When you say a mile you mean a mile from the landing?

A. Yes; from the steamboat landing.

Q. Whom did you see there?

A. Ed. Willits.

Q. Did you hear any conversation between Ed. Willits and Capt. Tromley?

A. Yes, sir.

Q. George Tromley, Jr., was the captain of that boat?

A. Yes, sir.

Q. Just state what occurred—what that conversation was.

A. No answer given.

Q. You left that half raft there?

A. Yes, sir.

Q. Did you leave anybody else in charge?

A. Yes, sir.

Q. In whose charge?

A. Ed. Willits.

125 Q. Who made the arrangement with Willits to leave it with him?

A. George Tromley.

Q. Was you present when the arrangement was made?

A. Yes, sir.

Q. What was said between them with reference to this raft?

A. About watching the raft?

Q. About leaving the raft.

A. He said he wanted to leave it there 10 or 15 days.

Q. What further was said?

A. He said he didn't know whether he would want to take it that fall. I don't know whether the company would want it brought into St. Louis or not.

Q. Did he say anything with reference to what would be done with it if it was not?

A. He wanted it left into the bay there.

Q. Willits said that?

A. Yes, sir.

Q. Repeat his language.

A. He said if you don't take this out, when you come back you better move it up into the bay into winter quarters, as it is not considered safe there. We have not lost anything here, but it would be safer up there.

Q. Now, then, was there anything said between Tromley and Willits as to who should watch that raft—who it was to be done for?

A. He wanted him to watch it.

Q. Tell us as near as you can what he said.

A. He said he wanted to leave that raft there 10 or 15 days and maybe all winter, and the Capt. will pay for it or the boat will stand good for it.

Q. He said McCaffrey will pay for it or the Capt. will pay for it or the boat will stand good for it?

A. Yes, sir.

126 Q. Did you count the raft with Willits?

A. Yes, sir.

Q. Did you say anything to Willetts with reference to giving you a receipt?

A. Yes, sir.

Q. When you wanted him to give you a receipt, what explanation did he make?

A. He said he would not give a receipt for the raft. He never did, and he would not be responsible for anything that was gone.

Q. You and he counted the raft together?

A. Yes, sir.

Q. Did you estimate the amount in the cribs or count the deck loading?

A. We simply counted the deck loading.

Q. How much was there in that raft; how many cribs in that raft that you left there?

A. There were 144 cribs there—144 or 148.

Q. What shape was the raft in—how wide was it, how long?

A. It was eight cribs wide and 18 cribs long.

Q. The cribs were lengthwise of the raft, so the width of it would be 128 feet?

A. Yes, sir.

Q. Look at this paper which I hand you, marked Exhibit "H." There seems to be figures on the upper margin of it. Do you know who put those there?

A. Yes, sir.

Q. Who did?

A. I did.

Q. What are those figures; what do they show?

A. They show the amount there was—that is, the amount of pieces of delivery in St. Louis or the amount in Boston bay.

Q. It was one or the other; it was put on there to keep a memorandum of them?

A. Yes; that is the memorandum.

Q. When you left that raft there how was it fastened?

A. It was fastened with two check-lines on the stern and one bow line from the bow of the raft.

127 Q. When you left it there and when you went down to St. Louis you fastened it with two check-lines?

A. Yes, sir.

Q. What was the size of these check-lines?

A. I think it was an inch and a half or an inch and three-quarters.

Q. Either an inch and a half or an inch and three-quarters?

A. Yes, sir.

Q. Were they strong enough for the purpose they were used for?

A. They were good line.

Q. Whose property were they?

A. They belonged to the steamboat—to the towing company.

Q. Were they used by you in this contract with your father?

A. Yes, sir.

Q. What sort of line was the line from the bow of the boat?

A. It was a smaller line.

Q. How large a line was that?

A. I think about an inch and a quarter line.

Q. About an inch and a quarter?

A. Yes, sir.

Q. Now, what did you do with the other half of that raft then?

A. We started for St. Louis the next morning.

Q. Did you lay up at any place before you got to St. Louis?

A. Yes, sir.

Q. Where did you lay the raft up?

A. In Quincy bay.

Q. What time of the day did you start up in Quincy bay with it?

A. I think right after dinner.

Q. How far did you get it up in the bay?

A. Up below the bridge. I don't know how far it was.

Q. About what was the distance?

A. A little more than a quarter of a mile.

128 Q. What did you do with it there?

A. We tied it up there and made it fast.

Q. What occurred after that?

A. We received a telegram to come ahead with it—to bring it to St. Louis.

Q. Look at this telegram and see if that is the telegram.

A. Yes; that is the telegram.

Q. This is the telegram marked Exhibit "F"?

A. Yes, sir.

Q. How came you to put the raft in there in Quincy bay?

A. We received a telegram from father to do so.

Q. Now, in regard to that, look at the telegram I now hand you and say if you got that.

A. Yes; I remember it now.

Counsel for complainant offers in evidence the telegram last referred to, and the same is marked Complainant's Exhibit "K," and is in the words and figures following, to wit:

Received at 131 N. Fourth St., Quincy, Ill., 10, 29, 1894.

Dated St. Louis, Mo., 29.

To Mr. Rob't Dodds, Q'ey bridge:

"Winter raft you have safe harbor, is Quincy bay safe?"

SCHULENBERG & BOECKELER LBR. CO.

Q. On receipt of the second telegram to go ahead, what did you do?

A. We telegraphed my father.

Q. After you received his response what did you do?

A. I telegraphed the company, I think, that we would start with the raft.

Q. What after that?

A. We started with the raft the next morning.

129 Q. Did you receive this telegram to lay up and the telegram to bring it ahead the same day?

A. Yes, sir.

Q. The next morning you went ahead down with it?

A. Yes, sir.

Q. What did you do with it?

A. We delivered it at Schulenburg and Boeckeler Lumber Company's landing in St. Louis.

Q. In St. Louis?

A. Yes, sir.

Q. Now, after that, did the Robert Dodds again come up the river from St. Louis?

A. Yes, sir.

Q. Can you tell from your own memory, without referring to memorandum, what date you arrived at St. Louis?

A. November 2nd.

Q. What date did you start to return?

A. November 2nd.

Q. You started back on the same day?

A. Yes, sir.

Q. To what point was the boat brought?

A. To New Boston.

Q. At what time did you reach New Boston?

A. About eight o'clock in the morning of November 4th.

Q. How long did you stay at that time before you left the raft?

A. We left the raft at 12.30, at noon.

Q. On reaching there what did you do with reference to the raft?

A. I had Willetts——

Q. Was Willetts there?

A. Yes; we whistled, and he came down to the boat.

Q. What was done then?

A. We counted the raft there.

Q. You counted the raft again?

A. Yes, sir.

Q. What was done with your boat, the Robert Dodds?

A. Four of the cribs were taken out of the side of the raft and she was put in place where the cribs had come out.

Q. Four cribs were taken out of the raft?

A. Yes, sir.

Q. Those on the side of the raft next to the river?

A. Yes, sir.

130 Q. What was done with the cribs?

A. I don't know whether they were put at the stern or side of the raft.

Q. The boat was set in the side of the raft where the cribs came out?

A. Yes, sir.

Q. How was the boat made fast?

A. The two check-lines from the shore was extended to our bitts, and there was line from the stern of the boat to the raft—went from alongside of her to the raft.

Q. Where did you say the lines were fastened, to the bitts that were connected with the raft?

A. They call them bit-s.

Q. What part of the boat?

A. Right on the bow.

Q. There was a line from that to the raft?

A. Yes, sir.

Q. Where was the other line from the boat to the raft?

A. One was alongside of her fastened to what we call a cavil, and there was one line from the stern of the boat to the raft.

Q. Where is this cavil business you speak of; where is it located?

A. Right alongside of the boilers guard of the boat.

Q. The boat was attached to the raft with these three lines?

A. Yes, sir.

Q. Then there were two lines stretched from it where they were made fast?

A. They were made fast on the shore.

Q. There were two lines stretched from it besides these lines?

A. There were two from our boat.

Q. Where were they made fast?

A. At the other end on the shore.

Q. They were fastened on the shore?

A. Yes, sir.

Q. Did they hold the raft?

A. Yes, sir.

Q. They were fastened on the *on the* shore?

A. No; on the check-works.

131 Q. They are on the raft ?

A. Yes, sir.

Q. The check-works ?

A. Yes, sir.

Q. Explain what that is.

A. It is a sort of a drum of contrivance on the raft to tie to ; it is what they tie lines to.

Q. That is a contrivance for that purpose ?

A. Yes, sir.

Q. When you came back from St. Louis did you bring any lines with you the property of Schulenburg & Boeckeler Lumber Company ?

A. Yes, sir.

Q. How many ?

A. I think two.

Q. How came you to bring them ?

A. Mr. Boeckeler said he had a couple of lines he wanted to send up to help hold that raft to secure it.

Q. You took them up ?

A. Yes, sir.

Q. When you got there with these lines did you put them on the raft ?

A. I don't remember.

Q. Do you remember whether additional lines were put on the raft when you came back in addition to what were on when you left it there ?

A. I don't remember.

Q. If there was any put on you didn't put them on ?

A. No, sir.

Q. Who put out the lines that were put out when you left them there ?

A. The mate of the boat.

Q. Who was that ?

A. My brother Frank.

Q. Frank was acting as mate ?

A. Yes, sir.

Q. Now, aside from counting the raft when you came back, was there any talk with Willits about leaving it there ?

A. Yes, sir.

Q. State what it was.

A. We had allowed to take it up in the harbor, but he thought it would be safe where it was.

132 Q. Willits said that ?

A. Yes, sir.

Q. Was that all that was said with reference to the raft that you heard ?

A. It is all I remember of now.

Q. Who helped you count it there again ?

A. I didn't count it—I didn't count it when I left it there the first time.

Q. Was it counted at all ?



A. No, sir.

Q. It was not counted at all?

A. No, sir.

Q. Was it when it was laid in there first that you had a talk about a receipt?

A. Yes, sir.

Q. That is when the conversation about the receipt occurred?

A. Let me see; I don't think it was.

Q. Was not Willits asked for a receipt when it was first put in there?

A. I don't remember now.

Q. You don't remember whether he was asked for a receipt for it at that time or not?

A. No, sir.

Q. And the only conversation which you had with reference to what should be done when you came back was the conversation as to whether it should be left where it was or put in the inner harbor?

A. That is all I remember.

Q. During that season of 1894 what business was the Robert Dodds engaged in—the boat, I mean?

A. Towing lumber.

Q. Under this contract of your father's?

A. Yes, sir.

Q. Did it do anything else during that season?

A. Yes, sir.

Q. What was it?

A. Towed a few barges from St. Louis up the river.

133 Q. As the boat came back from St. Louis?

A. Yes, sir.

Q. It towed some barges up the river?

A. Yes, sir.

Q. How many trips did it tow barges back?

A. Only one trip.

Q. That was in pursuance of some special contract?

A. Yes, sir; some arrangement made with my father.

Q. Can you state how much lumber was left in that raft in Boston bay?

A. I can pretty nearly, I think.

Q. Have you any memorandum of it?

A. Yes, sir.

Q. Refer to your memorandum and tell us what it is.

A. 1,618,065 feet.

Q. That don't include the grub plank?

A. No, sir.

And being cross-examined by counsel for defendant-, the witness, JOHN McCaffrey, Jr., testified as follows:

Q. X. You say you was clerk of the Robert Dodds during 1893?

A. Yes, sir.

Q. X. And also 1894?

A. Yes, sir.

Q. X. And the Capt. was Geo. Tromley. Who did you say was captain?

A. George Tromley, Jr.

Q. X. During which year or both?

A. During 1894.

Q. X. You have spoken that you left the raft in Cat Tail slough; is that the name of it?

A. Yes, sir.

Q. X. When was it you left it there; what was the number of the raft?

A. It was in the fall of 1893, I think, and raft No. 10; it was the last raft we received from Stillwater.

Q. X. How did you happen to leave it there?

A. I believe they wrote to my father or to Henry.

Q. X. Who did you get your orders from to leave it there?  
134 A. My father.

Q. X. Your father told you to leave it there?

A. Yes, sir.

Q. X. You say there was also a raft left in Alton slough?

A. Yes, sir.

Q. X. And the raft was left in Cat Tail slough you spoke of?

A. Yes, sir.

Q. X. When was that you left the raft in Alton slough; what raft was it?

A. In the spring of 1894; the same raft we left Stillwater with in the fall of 1893.

Q. X. The entire raft was left there?

A. No, sir; half a raft.

Q. X. Do you recollect the orders directing you to leave it there?

A. Yes, sir.

Q. X. From whom, Schulenburg and Boeckeler Lumber Co.?

A. Yes, sir.

Q. X. What was the reason of leaving it in Cat Tail slough?

A. To put it in winter quarters.

Q. X. It remained there over winter?

A. Yes, sir.

Q. X. And Alton slough was the same way?

A. No, sir.

Q. X. That didn't remain there over winter?

A. No, sir.

Q. X. What did you do that for?

A. That was too much to tow into St. Louis at one time.

Q. X. I thought you said you left the whole raft at Alton slough?

A. No, sir.

Q. X. You left half a raft there?

A. Yes, sir.

Q. X. Then came back and got the other half and took it down the same year?

A. No, sir.

Q. X. This half raft was left during the winter?

Q. X. How long was it left there?

A. I don't know.

Q. X. So far as you know, it was left there; when it was taken away you don't know.

A. No, sir.

135 Q. X. Who watched the raft at Cat Tail slough?

A. I can't just recollect his name. I am acquainted with the name, too.

Q. X. Was it Rexford Bros.?

A. Yes, sir.

Q. X. Do you know who paid for the watching of that raft in Cat Tail slough?

A. I think Schulenburg and Boeckeler Lumber Company.

Q. X. Who paid for the one in Alton slough; the watching?

A. Schulenburg and Boeckeler Lumber Co.

Q. X. This raft—was you on the boat when it started from Still-water with this raft No. 10 in controversy in this suit?

A. No, sir.

Q. X. Where did you meet the raft?

A. I met the raft at Prescott.

Q. —. You met it at Prescott?

A. Yes, sir.

Q. X. Then you went down along as far as you could to where you put it in Boston bay?

A. Yes, sir; I went clear there on it.

Q. X. You went into Boston bay?

A. Yes, sir.

Q. X. When you went into Boston bay the whole raft was taken in?

A. Yes, sir.

Q. X. Where did you receive orders to take it? Did you receive orders to take that in there, of your own knowledge?

A. Only from my father.

Q. X. Then you went in there—so when you went in there was it to leave the whole raft; what did you go in for?

A. We were in too big a hurry to take all down at once.

Q. X. The river was low and you could not safely take the whole raft down at once?

A. No, sir.

Q. X. Would it take longer to take that whole raft all at once than to take part down and then come back and take the balance of it?

A. Not much longer.

Q. X. Which would take the longer?

A. To double-trip, of course.

136 Q. X. The water was low and you was in a hurry, and so you went in there?

A. Yes, sir.

Q. X. Was it because the river was low and you didn't think it safe to take that much down?

A. No, sir.

Q. X. When the boat went in there—when the raft was in there Willits was there?

A. Yes, sir.

Q. X. He met you right there?

A. No, sir.

Q. X. You whistled for him?

A. Yes, sir.

Q. X. Why did you whistle?

A. That is ordinary in such cases.

Q. X. What did you have to do with Willits, anyway, one way or the other; what was the occasion of whistling; what did you want with him, anyway?

A. We wanted to see him about watching the raft.

Q. X. About watching the raft?

A. Yes, sir.

Q. X. Take the case in Cat Tail slough. Did you whistle for the parties there?

A. They lived right there.

Q. X. These parties watched rafts or have watched rafts for Schulenburg & Boeckeler Lumber Co. before your raft was put in there?

A. Not that I know of.

Q. X. They had in both these other cases, in Alton and Cat Tail slough?

A. They had a man at Alton.

Q. X. The captain whistled, and Willits came down and took charge of it?

A. We hired him to watch the raft.

Q. X. Didn't he tell you where to put the raft and where to put the lines?

A. No, sir; he told us where to put it.

Q. X. He told you where to put it?

A. Yes, sir.

Q. X. Didn't he tell you and direct you as to the fastening of the lines?

A. No, sir.

Q. X. Who did that?

A. The captain of the boat.

137 Q. X. You say at that time Capt. Tromley said he would be there, or the raft would be there, some 10 or 15 days?

A. Yes, sir.

Q. X. He didn't know whether it would be there for the winter or not, but for 10 or 15 days, anyway?

A. Yes, sir.

Q. X. He didn't say he would be up there for the winter or not?

A. He said he would leave it there for 10 or 15 days.

Q. X. You separated the raft there and proceeded to St. Louis?

A. Yes, sir.

Q. X. When you got to St. Louis, or as you proceeded to St. Louis, did you write to the Schulenburg & Boeckeler Lumber Co. that you wanted some money?

A. I don't remember now.

Q. X. Well, didn't you? Look at that.

A. Yes, sir; that is my letter.

Q. X. Do you recollect it now?

A. I don't recollect writing it, but that is my writing.

Q. X. Well, do you recollect your signature to that?

A. Yes, sir.

Q. X. Those are both your signatures?

A. Yes, sir.

Q. X. Then you wrote this letter, acting for your father?

A. By his instructions; yes.

Counsel for defendant introduced letters marked Defendant's "A," "B," and "C" on the cross-examination of John McCaffrey, Jr., and the same are in the words and figures following, to wit:

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## EXHIBIT "A."

DEF'T- "A."

CL'KSVILLE, Mo., Oct. 31.

Messrs. Schulenburg & Boeckeler, St. Louis, Mo.

DEAR SIRs: Yours of the 29th, care Louisiana bridge, rec'd this morning 5 a. m., & will make raft 10 wide before delivering.

Wish to get (\$2,000.00) two thousand dollars cash upon delivery of raft.

Yours truly,

J. McCAFFREY, JR.

Pass Cl'ksville, 7.30 a. m.—Will deliver Friday if nothing happens.

## DEFENDANT'S EXHIBIT "B."

ST. LOUIS, Mo., Nov. 2, 1894.

Received of Schulenburg & Boeckeler Lumber Co. two hundred and fifty dollars on % running.

\$250.00.

J. McCAFFREY, JR.

## DEFENDANT'S EXHIBIT "C."

ST. LOUIS, Mo., Nov. 2nd, 1894.

Received of Schulenburg & Boeckeler Lumber Co. one thousand dollars on % John McCaffrey.

\$1,000.00.

JACK McCAFFREY, JR.

139 Q. X. In the letter you write for \$2,000, and they paid you \$1,250?

A. Yes, sir.

Q. X. That was satisfactory?

A. No, sir.

Q. X. Did you want more?

A. Yes, sir; I wanted more.

Q. X. Well now, just before that you said you didn't recollect as to whether they paid you anything or not?

A. No, sir; I didn't know.

Q. X. You said you didn't know whether you wrote them a letter about it?

A. No, sir.

Q. X. You do recollect they paid you some money?

A. Yes, sir.

Q. X. Now, when you got there, how long did you remain with that raft you got in November 2nd; how long did you remain there?

A. From nine o'clock in the morning until two in the afternoon.

Q. X. Now, from whom did you get your money?

A. From Mr. Boeckeler.

Q. X. Didn't Mr. Boeckeler tell you at that time that he had received a letter from Mr. Willits before you got in, informing him of the fact that a half of the raft was left there, and he was taking charge of it and wanting more ropes from them, and asked you to take up the ropes to him to put on the raft to make it secure, because they intended to keep it there all winter?

A. No, sir.

Q. X. He didn't say anything of that kind to you?

A. I don't remember him saying anything of that kind.

Q. X. Didn't he give some ropes to you?

A. Jim Gleason gave them to me by his orders.

140 Q. X. Didn't Mr. Boeckeler tell you that he would send the ropes there for that purpose?

A. He said to put them on the raft to help hold it.

Q. X. Did Mr. Boeckeler tell you he wanted to send the ropes there for the purpose of holding that raft?

A. For the purpose of helping to hold it.

Q. X. He wanted it to remain there during the winter?

A. Yes, sir.

Q. X. He did say that much?

A. Yes, sir.

Q. X. Didn't he say he received a letter from him to that effect—that he was watching the raft and wanted these ropes?

A. No, sir.

Q. X. You are not sure of that?

A. Yes, sir.

Q. X. Now you say that you asked Willits to give you a receipt when you first went in after the raft?

A. No, sir.

Q. X. Didn't you testify to that in your examination-in-chief this morning?

A. No, sir.

Q. X. Didn't you testify that when you went there you said that you wanted to have a receipt from him for the raft?

A. If I did I made a mistake. It was not when I first went in.

Q. X. Was it on your return?

A. Yes, sir.

Q. X. Did you take the ropes up there?

A. Yes, sir.

Q. X. Did you deliver them to Willits or were they delivered to him?

A. I think they were. I don't know anything about the lines.

Q. X. Don't you know these ropes were taken there and fastened the raft to the shore—that they fastened the raft with these ropes?

A. No, sir.

Q. X. You didn't see the ropes there?

A. I didn't see them put out.

141 Q. X. You was there on the raft?

A. I saw them on the boat.

Q. X. You saw them on the raft afterwards?

A. No, sir.

Q. X. Did you stay at the raft at all?

A. I was counting it there.

Q. X. How long did you stay there?

A. That I could not say. We got there at nine in the morning and left about 12.30.

Q. X. You counted the raft there?

A. Yes, sir.

Q. X. What was your object in counting it over?

A. I wanted to have a statement showing how much deck loading there was on the raft.

Q. X. It was the deck loading you counted?

A. That is all.

Q. X. That is the time when you had been counting it, and you wanted the receipt?

A. I spoke to Willits before I counted it.

Q. X. About getting a receipt?

A. Yes, sir.

Q. X. What did you want a receipt for?

A. I wanted it to show, if any was lost in the spring, when we got the raft out.

Q. X. Was that to show the Schulenburg & Boeckeler Lumber Co., or what?

A. No, sir.

Q. X. Was it not for that purpose?

A. No, sir.

Q. X. What if there had been anything lost, what difference would it make?

A. I wanted to know where it was lost.

Q. X. Schulenburg & Boeckeler had laid it up there and had sent ropes there to tie it up, and it was laid up there, and Willits was watching it. What did you want a receipt for?

A. Father would have to pay for anything that was lost.

Q. X. That is your idea?

A. Yes, sir.



142 Q. X. Now, sir, did you ask him for a receipt for the steamer Dodds?

A. No, sir.

Q. X. Why might you not lose things on the steamer Dodds?

A. We took most of the things off, and we knew what was on her.

Q. X. You didn't want any for the steamer Dodds?

A. No, sir.

Q. X. What did you want that \$1,250 for—what was your object in getting that?

A. To pay off the crew, I think.

Q. X. To pay off the crew for running that raft?

A. Yes, sir.

Q. X. For work that was done on that raft?

A. Yes, sir.

Q. X. For work that was done towing that raft?

A. For work done during the season, not for that particular raft specially; he didn't pay at every trip.

Q. X. Was there any of this grub plank on top of the raft?

A. I don't remember, but I think there was.

Q. X. You say you are not certain?

A. No, sir; I am not certain.

Q. X. What day did you lay up in Quincy bay?

A. I don't remember what day we laid up there.

Q. X. When do you think it was?

A. It was between October 26th and November 1st.

Q. X. Do you recollect the time of the day you laid up there?

A. I think it was about 11 o'clock in the morning.

Q. X. What time did you get the dispatch to lay up?

A. Just about that time.

Q. X. Had you laid up before or after you got the dispatch?

A. They hailed us going up; they hailed us with the ferry-boat, and we went in and got the dispatch, and that said to lay up the raft, and we started to back up in the bay.

143 Q. X. What time did you get the dispatch to go from there—to go from Quincy?

A. I think about two o'clock.

Q. X. Did you start that day?

A. No, sir.

Q. X. Why not?

A. We were out of fuel.

Q. X. I will ask you if you didn't wait to receive a dispatch from your father before you went on.

A. No, sir.

Q. X. Did you get the fuel that day?

A. Yes, sir.

Q. X. When did you start?

A. We started the next morning.

Q. X. You have got in here a charge of \$150 for that?

A. Yes, sir.

Q. X. What was that for?

A. This is for the trouble we had.

Q. X. For one hour's work?

A. For lost time there.

Q. X. Now, when the raft was landed there, you first fastened it with three lines?

A. Yes, sir.

Q. X. And one line was on what you call the check-works, or two lines were check-lines and the other was a small bow line?

A. Yes, sir.

Q. X. Then, afterwards, those lines were left on?

A. Yes, sir.

Q. X. And then the two lines that Schulenburg & Boeckeler Lumber Company sent up were put on it?

A. I don't know.

Q. X. When the boat came up there, you said four cribs were taken out?

A. I think four.

Q. X. How long is a crib?

A. It is 32 feet long.

Q. X. How long was your boat?

A. About 125 feet long.

Q. X. How long is the wheel?

A. It is 128 feet over all.

Q. X. 128 feet?

A. I think so.

Q. X. Was there more than four cribs taken out?

A. I don't think so.

Q. X. You still think there was four cribs?

A. Yes, sir.

Q. X. You still think there was four cribs?

A. Yes, sir; I think so.

144 Q. X. When the boat went up there the boat went into winter quarters?

A. Yes, sir.

Q. X. And it remain- there through the winter?

A. Yes, sir.

Q. X. It is customary when a boat remains in winter quarters to put aside the raft—that is the safest place for it?

A. I don't know.

Q. X. Didn't they generally do so?

A. We did last winter.

Q. X. That is generally the safest place for the boat—on the outside—when the water falls the boat will still be in the water?

A. Yes, sir.

Q. X. It is put on the outside for that purpose?

A. Yes, sir.

Q. X. You wanted you- boat to be safe—you desired the boat's safety, and took out four cribs to make a place for the boat to lie in there and keep it from the running ice?

A. Yes, sir.

Q. X. That is the way Willits states it?

A. Yes, sir.

Q. X. He helped you put it that way?

A. I think he was there.

And being further examined by counsel for the complainant, the witness, JOHN McCAFFREY, JR., testified as follows:

Q. Do you know who employed Ed. Willits to watch the raft in there?

A. Yes, sir.

Q. X. Who did?

A. My father did.

Q. There was a raft laid up in Cat Tail slough?

A. Yes, sir.

Q. And part of a raft laid up on Alton slough?

A. Yes, sir.

145 Q. You say you wanted a receipt from this man because your father would be responsible for the lumber lost off that raft?

A. Yes, sir.

Q. Do you know who had to pay for the lumber lost off the raft in Alton slough?

A. Yes, sir.

Q. Who?

A. My father.

Q. That is the raft watched for you by Rexford Bros.?

A. No, sir.

Q. Is not that the raft that was watched by the Rexford Bros.?

A. Yes, sir; part of it.

Q. Did they present to your father an itemized charge for the shortage on that raft?

A. Yes, sir.

Q. Is this it?

A. Yes, sir.

Q. Did they present him with any statement charging him with the shortage on that raft?

A. Yes, sir.

Q. Is this it?

A. Yes, sir.

Q. There is some items of shingles and lath in there?

A. Yes, sir.

Q. These were lost off that raft while in Alton slough?

A. Yes, sir.

Counsel for complainant offers the bill in evidence of the shortage above referred to, and the same is marked Complainant's Exhibit "L," and is in the words and figures following, to wit:

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## COMPLAINANT'S EXHIBIT "L."

Schulenburg &amp; Boeckeler Lumber Co.

St. Louis, Apr. 1st &amp; 17th, 1894.

Received raft # 9 of season 1893—

Less

Shortage on lath-, 14,200 pcs. at \$2.00.....	28.40	
“ “ shgs., 15,200 “ “ 2.00.. . . .	31.00	
		59.40
“ “ piece that struck Alton bridge April 1st, 13,262 ft. at 15.00 .....		198.93
		<hr/> \$258.33

SCHULENBURG & BOECKELER LUMBER CO.  
WM. —.

Q. This stuff—shingles, lath, and lumber—was lost off that raft while in charge of this man they had which they denominate their watchman?

A. Do you mean in Alton slough?

Q. There is a charge of 13,000 feet of lumber at \$15 a thousand. Explain how that came.

A. That is the piece of raft that hit the Alton bridge.

Q. That is where the charge for lumber came in?

A. Yes, sir.

Q. When you left that raft in there on that occasion you counted it there with the watchman?

A. Yes, sir.

Q. It was all right at that time?

A. Yes, sir.

Q. At the time this \$1,250 was paid to you down there did you know the state of your father's account with these gentlemen, the Schulenburg & Boeckeler Lumber Co.?

A. Pretty well; yes.

147 Q. Do you know what was the account? Did you know then about what was due, aside from towing the raft that you was taking down?

A. Yes sir.

Q. State in round numbers what it was.

A. It was between three and four thousand dollars.

Q. Aside from taking this raft down?

A. Yes, sir.

Q. I will ask you to state what the custom was in relation to collecting the towage when you delivered a half raft before you delivered the other half.

A. They would not pay me until the whole raft had been delivered.

Q. During the time—that is, since April 6th, 1893—had you had a boat laid up in Boston bay before?

A. Not that I know of; not while I was on there.

Q. Over winter, I mean?

A. No, sir.

Q. Why was this boat laid up at this place?

A. To be there in the spring to take that piece of raft out.

Q. Your father was then living in Davenport or Le Claire?

A. I think he had moved down a little before that time.

And being further cross-examined by counsel for the defendant, the witness, JOHN McCaffrey, Jr., testified as follows:

Q. X. Where did you get this paper you have shown here?

A. I think that was sent to my father.

Q. X. Where did you get it?

A. He gave it to me.

Q. X. Then all you know about it you got from your father?

A. That is all.

148 Q. X. This Alton bridge, you say the raft ran into one of the piers there?

A. No, sir.

Q. X. What do you mean by the Alton bridge?

A. There was a pile-driver and a lot of piles right in the draw-span.

Q. X. You ran into it?

A. It was not wide enough for the raft to go through.

Q. X. You struck it, then?

A. Yes, sir.

Q. X. What was the result of that?

A. It damages the bottom of the crib, and some of the lumber got away.

Q. X. And they sent you this bill "Alton bridge for the damage"?

A. Yes, sir; the company did.

Q. X. Your father was responsible, and they sent him a bill for what they claimed was the damage to the raft by that collision?

A. Yes, sir.

Q. X. Now, take this other case, where the raft was short when it got to St. Louis?

A. According to that statement, yes.

Q. X. Did you count it when it got to St. Louis?

A. No, sir.

Q. X. Did you go down with it that trip?

A. No, sir.

Q. X. Who was there at that time?

A. None of our people were there.

Q. X. How did the raft get in there?

A. The steamer Thomas Parker dropped it in there.

Q. X. Was not that the first raft, and you came right through with it?

A. No, sir.

Q. X. Who brought that down, do you say, the steamer Parker?

A. I think the charge on the bill to us was, "Steamer Thomas Parker, dropping half a raft"——

Q. X. That was the same piece that was left in Alton slough?

A. That was the piece left in Alton slough.

149 Q. X. I mean the shortage. Was you in town at that time when the steamer Parker brought it down?

A. I think I was.

Q. X. You think you was?

A. Yes, sir.

Q. X. You was not present at that time?

A. No, sir.

Q. X. You had counted everything and knew everything was all right?

A. When we put it in Alton slough?

Q. X. When you put in Alton slough.

A. Yes, sir.

Q. X. What time did you put in there?

A. I think it was the last day of March, perhaps.

Q. X. Then you don't know what happened to the raft from the time it left Alton slough until it was delivered to Schulenburg & Boeckeler Lumber Co.?

A. No, sir.

Q. X. You don't know where it was delivered in St. Louis?

A. No, sir.

Q. X. You don't know when it was delivered in St. Louis—whether there was any shortage or anything of that kind?

A. No, sir.

And being further examined by counsel for the complainant, the witness, JOHN McCaffrey, Jr., testified as follows:

Q. Then you speak of the pile-driver striking the raft was before you got into Alton slough?

A. Yes, sir.

Q. After you got into Alton slough is when you counted the deck-loading and it was all right?

A. Yes, sir.

Q. The count was correct at that time?

A. Yes, sir.

Q. That half raft was taken by some other boat than yours?

A. Yes, sir.

150 And being further cross-examined by counsel for the defendant, the witness, JOHN McCaffrey, testified as follows:

Q. X. Is this your signature?

A. Yes, sir.

Q. X. Didn't you come down at that time?

A. There were two pieces to that raft.

Q. X. Was you not down in St. Louis at the time?

A. Yes, sir.

Q. X. Then you did bring part of that raft down?

A. I didn't say that I didn't.

Q. X. Didn't I understand you to say you was not in St. Louis at all?

A. No, sir.

Q. X. Now, at that time didn't you come down there and bring down part of a raft, and didn't you receive some money at that time?

A. Yes, sir.

Q. X. Well, now, is the time you was down there and took this money on this raft, part of the raft, whatever was there—that was the time in which the shortage was claimed?

A. No, sir.

Q. X. Did you count it at that time, after you got to St. Louis?

A. No, sir.

Q. X. Then you don't know whether it was there when you got to St. Louis?

A. There was no damage to it.

Q. X. Did you ever receive an account of how it came out?

A. I don't know.

And being further examined by counsel for the complainant, the witness, JOHN McCAFFREY, JR., testified as follows:

Q. This is the same raft that lay in Cat Tail slough?

A. Yes, sir.

Q. X. You counted it in Cat Tail slough?

A. Yes, sir.

151 Q. And it was all right then?

A. Yes, sir.

Q. You didn't have any trouble with the half you went in with?

A. No, sir.

Q. X. And you put the other half in Alton slough with a watchman?

A. Yes, sir.

Q. You didn't have any trouble or lose anything off the half you took in?

A. No, sir.

GEORGE TROMLEY, JR., a witness called on the part of the complainant, being first duly sworn, testified as follows:

Q. Where do you reside?

A. At Le Claire, Iowa.

Q. How long have you lived there?

A. About 37 years.

Q. What is your business?

A. I am a pilot.

Q. How long have you been in that occupation?

A. About 15 years.

Q. In the summer of 1894 what boat was you on?

A. I was on the Robert Dodds.

Q. In what capacity?

A. As master and pilot.



Q. Are you related to John McCaffrey?

A. Yes, sir; he is an uncle of mine.

Q. Do you recollect the circumstance of the towing of the raft called No. 10?

A. Something about it; yes.

Q. Did you receive any orders to lay up part of that raft in New Boston bay?

A. Not specially.

Q. What steamer was you on?

A. On the Robert Dodds.

Q. You was the captain?

A. Yes, sir.

Q. Did you receive any orders to lay up any part of that raft in New Boston bay?

A. Yes, sir.

152 Q. From whom?

A. From Capt. McCaffrey.

Q. When you got to Boston bay, what did you do with the raft?

A. I put it in the bay—in Sturgeon bay.

Q. How much of it?

A. One-half of it.

Q. Whereabouts did you leave it?

A. On the Illinois shore—just about the levy—half a mile from the landing.

Q. Do you remember a little fish-house that stood near where you landed that raft?

A. There are two small houses. I suppose they are fish-houses.

Q. Can you tell whether above or below that place?

A. They were below the raft.

Q. They were below the raft?

A. Yes, sir.

Q. Did you make any arrangement there with anybody to watch the raft?

A. I made arrangement with Mr. Willits.

Q. When you started to go in there you got half the raft stuck?

A. Yes, sir.

Q. Then you whistled?

A. Yes, sir.

Q. What did you whistle for?

A. I whistled for the watchman of New Boston bay.

Q. He came there?

A. Willits came down in a skiff.

Q. State what was said between you and him in regard to watching the raft.

A. I told him I wanted to leave this raft in the bay for 10 or 15 days and probably for the winter; that I could not tell until I got to St. Louis; that I would get orders there whether to take it on or leave it there for the winter; that is about all.

Q. Did you say anything to him about watching it?

A. I told him to watch it, and whatever the price would be I would pay him when I took it.

153 Q. Did you say anything to him about McCaffrey paying him?

A. No, sir; not at that time.

Q. Not at that time?

A. No, sir.

Q. Now, was that all the conversation you had with him in regard to the matter?

A. Yes, sir.

Q. Did you observe how the raft was fastened to the shore?

A. We had it tied there with one or two lines to the stern and one or two to the bow of the raft, all our own lines.

Q. Where did you go after that?

A. We went on down to St. Louis with the other half raft.

Q. Did you stop anywhere else with the other half?

A. We stopped in Quincy bay.

Q. You stopped in Quincy bay?

A. Yes, sir.

Q. How long was you in there?

A. We went in there and was in there from before noon until the next morning at three o'clock.

Q. Let me ask you whether there was anything said between you and Willits about the raft being moved if it was left there all winter.

A. He said if we concluded to leave it in Boston bay through the winter that it was not safe there—that it was not a safe harbor along the Illinois shore and it would have to be moved up into what is called the winter bay.

Q. Do you know the date you delivered that raft to St. Louis?

A. No, sir; I don't. It was in the latter part of October or the first of November. I don't know the date exactly.

Q. Then you returned where?

A. To Boston bay.

Q. Do you remember the date you reached Boston?

A. It was on Sunday morning, about the 4th or 5th of November.

154 Q. What time on Sunday morning did you get there?

A. It was between 8 and 9 o'clock, early in the morning.

Q. Did you say anything to Willits at that time about that raft?

A. Nothing more than I told him that we concluded to lay the raft up through the winter.

Q. Is that all you said to him about it?

A. No. I said the Capt. will pay you for watching the raft, and if he don't, the steamer will be good for it.

Q. You told him McCaffrey would pay him or the steamer was good for it?

A. Yes, sir.

Q. Was there anything said about moving it?

A. He said the water was too low to get into the winter bay, and

it would have to remain where it was; that he thought it was probably safe and all right there.

Q. Did you hear a conversation between him and Jack McCaffrey when he refused to give a receipt for the raft?

A. Yes, sir; some.

Q. When was it—when you went down or when you came back?

A. When we came back up.

Q. Can you say what Willitts said about it?

A. Jack asked him to count the raft, and he said there was no use counting it; that he would not be responsible for anything, and he didn't see any use in counting it. He said he could count it, but he would not give him any receipt for it.

Q. Then he went and counted it?

A. Yes, sir.

Q. How long was you there that day altogether?

A. We left there about 12 or 1 o'clock—about that time the same day.

Q. What did you do with the steamer Robert Dodds?

A. We put that on the outside of the raft.

155 Q. Did you take any cribs out?

A. We took out four or five cribs to let the boat in along-side of the raft.

Q. You took enough out to let the boat in?

A. Yes, sir.

Q. How was the boat fastened to the shore?

A. She was fastened with a bow line and a stern line, and I think with a breast line, and I think—and one to the shore.

Q. What lines were there from the boat to the raft?

A. There were two from the boat to the raft and possibly three.

Q. You are not certain whether there were three from the boat to the raft or not?

A. No, sir; I am not certain of that.

Q. What part of the raft did you take the cribs out of?

A. The outside of the raft—about the center.

Q. Out of the center of the raft on the outside?

A. Yes, sir.

Q. Do you know or do you remember whether you brought up any other lines?

A. We brought up two lines, I think. I am not certain whether one or two or three.

Q. From the Schulenburg & Boeckeler Lumber Company?

A. Yes, sir.

Q. When you stopped there who put out the lines in the first place?

A. When we first put the raft in Boston bay here the mate put the lines out.

Q. Who attended to running them out when you came back?

A. Why, the mate, of course.

156 Q. Frank McCaffrey do you mean?

A. Yes, sir.

Q. X. How much time did you lose down there getting into Quincy bay and out again?

A. We lost the biggest part of the day.

Q. You laid there over night?

A. Yes, sir.

Q. By which method could you make the best time in getting the raft to St. Louis—by leaving part and coming back and taking the balance or taking it all down at once?

A. By taking it all at once.

Q. How much longer would it take you to take it down part at a time than to take it all at once?

A. It would take from one-third to one-fourth longer.

Q. How many days would that be?

A. Talking about double-tripping, it would take from 16 to 17 days, and if you take it down all at once you could take it down in 9 or 10 days, if you had no bad luck.

Q. You say it would take 16 or 17 days to double trip?

A. About that much.

Q. Taking that piece of a raft in Boston bay and going down, how long would it take you to go down with that half raft?

A. About 8 days, I should judge—about seven or eight days.

Q. How long with the whole raft?

A. Nine or ten days.

And being cross-examined by counsel for the defendant, the witness, GEORGE TROMBLEY, JR., testified as follows:

Q. X. You say you only took out four cribs?

A. Four or five cribs.

157 Q. X. You said four. Are you certain it was four?

A. We took out enough to put the boat in.

Q. X. Are you positive whether it was four or five?

A. We took out four or five cribs; we took out enough to put the boat in there.

Q. X. You have had a chance to think of it if you know how long the boat was?

A. We didn't do any thinking at all.

Q. X. How many was it—four or five?

A. We took out four or five cribs.

Q. X. Can't you say, knowing the length of your boat, whether it was, in your judgment, four or five?

A. I can't tell you that.

Q. X. Do you know how long your boat is?

A. No, sir.

Q. X. You don't know how many feet it is?

A. No, sir.

Q. X. Do you know how long the wheel is from the stern of the boat?

A. I know there is a wheel back there; I don't know how long it is.

Q. X. You have no judgment of any kind about it?

A. Yes, sir ; I have a little bit.

Q. X. So that you can tell the length of it ?

A. No, sir.

Q. X. Now, then, Captain Tromley, you was ordered to go into Boston bay ?

A. Yes, sir.

Q. X. You say you whistled for the watchman ?

A. Yes, sir.

Q. X. Well, Willits is the watchman there who watches rafts in there ?

158 A. I was looking for the watchman in Boston bay.

Q. X. Did you know who he was ?

A. I knew Willits ; he had been there before.

Q. X. He had been watchman for a number of years watching rafts and you whistled for him ?

A. I whistled for the watchman.

Q. X. Willits came in response to that ?

A. Yes, sir.

Q. X. When he came there you told him the raft would remain there 10 or 15 days, or perhaps all winter ?

A. Yes, sir.

Q. X. And he told you if it was going to remain all winter you had better put it in the bay higher up ?

A. Yes, sir.

Q. —. Did he help you put the lines out ?

A. We put our own lines out.

Q. X. Didn't you fasten them at all ?

A. Yes, sir.

Q. X. Then you put the lines out ?

A. We put the lines out.

Q. X. Where were lines put out to fasten the raft ?

A. Yes, sir.

Q. X. The raft was fastened by how many lines ?

A. When we first put in.

Q. X. When you first came there ?

A. There were one or two lines at the side and one at the bow.

Q. X. After you fastened the raft in there you proceeded to St. Louis ?

A. Yes, sir.

Q. X. You got as far as Quincy and you went in there because you was out of coal ?

A. No, sir ; we had enough coal to take us as far as Hannibal.

159 Q. X. What time did you get the dispatch to go in there ?

A. Along about noon, as near as I can remember.

Q. X. What time did you get one to come on to St. Louis ?

A. Along in the afternoon between two and three o'clock.

Q. X. Did you start out that afternoon ?

A. We did not ; we didn't have fuel enough on the boat.

Q. X. I thought you said you had coal enough ?

A. We had, if we had kept right on, to take us to Hannibal, but

when you went back—a raft around in the bay three or four hours, it burns up lots of coal.

Q. X. You burned up all your fuel in Quincy bay?

A. Yes, sir; you can burn enough coal backing up and monkeying around with a raft, a good deal more than you would have going straight ahead.

Q. X. By laying up you burn more coal than when you are running?

A. No, sir.

Q. X. Why didn't you start before the next morning?

A. The water was low and it was pretty nearly night, and there was no use in going out then and daylight very nearly gone when we had coaled up.

Q. X. But you concluded you would not go until the next morning?

A. Yes, sir.

Q. X. Was it moonlight down there?

A. We don't run after night in low water.

Q. X. You don't run rafts after night?

A. Not in low water.

Q. X. Now, when Willits arrived—when Willits first came down there—what did you say to Willits of any kind? Was there anything said about pay or was he just left in charge of it?

160 A. When we first put the raft in there I told him we would leave the raft there 10 or 15 days and probably all winter.

Q. X. Was there any bargain made as to what you was to pay him?

A. No, sir.

Q. X. When you came back was there any contract made—you say there was some talk about a receipt; that McCaffrey asked something about a receipt and he said he would not give him any receipt?

A. Yes, sir.

Q. X. Was there any bargain made to watch the raft for any amount of pay?

A. Yes, sir.

Q. X. You never made any agreement as to what he was to receive?

A. No, sir.

Q. X. Was he not put in charge of the steamer Robert Dodds?

A. Yes, sir.

Q. X. Was he to watch the steamer Robert Dodds?

A. Yes, sir.

Q. X. Was there any bargain as to what he was to receive for watching the Robert Dodds?

A. Yes, sir; I think \$60.

Q. X. For what?

A. \$60 for the winter.

Q. X. Was there any agreement made of any kind as to what he was to get for watching the raft?

A. They have a usual price for watching rafts.

Q. X. Did you have any agreement as to what he was to get for it?

A. No, sir.

And being further examined by counsel for the complainant, and the witness, GEORGE TROMLEY, testified as follows:

161 Q. Why didn't you make an agreement about watching the raft?

A. I have laid up rafts in Boston bay. I knew there was a usual price that they had for it—for watching rafts—and the man I worked for generally paid for the watching.

Q. You didn't ask him what the price was when you went down or came back?

A. I said the raft would be there 10 or 15 days, and whatever the charges were we would pay him for it.

Q. X. You didn't ask him what the charges would be when you went down and came back?

A. No, sir.

Q. You employed him to watch the boat during the winter also?

A. Yes, sir.

Q. You never laid a boat up in there before?

A. I never laid a steamboat in there before.

Q. Did you work for Captain McCaffrey in 1893?

A. I made a trip on the steamboat—on the steamboat Dodds—in the fall of 1893. I expected to go on the boat the next summer.

Q. Do you remember of hiring a man to watch the raft at Cat Tail slough at the time you laid up in there?

A. McCaffrey gave us orders to run—we got orders that we could put the raft in there, and the watchman told us he would see McCaffrey, and he sent word back and told him it was all right.

Q. You fastened your boat there and made arrangements for him to watch the boat?

A. Yes, sir.

Q. What was it you said about your boat burning more coal backing the raft than going downstream?

162 A. We had enough coal to take us to Hannibal if we went down river, but to land in Quincy and then back out we lost so much time, and after we got around and got our fuel on and then backed up into Quincy bay we burned so much fuel that we could not go further without taking on more, and that is all there was about it.

Q. During this time you had been running for McCaffrey you never laid up a raft?

A. In 1894.

Q. While working under this contract?

A. No, sir.

Q. Did you have any knowledge or did anybody give you any information that Willits was employed by the Schulenburg & Boeckeler Lumber Company?

A. There was no one said so to me.



And being further cross-examined by counsel for the defendant, the witness TROMLEY testified as follows:

Q. X. You knew that he was watching rafts—that he had rafts in there?

A. He was watching for anybody and everybody.

Q. X. He watched for anybody who put a raft in there?

A. Yes, sir.

Q. X. You said you had taken rafts in there before, and the persons to whom they belonged paid for the watching?

A. Either the steamboat or the firm who owned the raft paid.

Q. X. Did you say the person to whom the raft belonged paid for the watching?

A. Yes, sir.

Q. X. How long did you take coal at Quincy?

A. We were at the landing place for an hour; the rest of the time we were getting on coal and pulling around the bay. It took the biggest part of a day or a day and a half.

163 Q. X. How long did it take you to run down to Hannibal?

A. About eight hours.

Q. X. You landed there about 12 o'clock?

A. Yes, sir; about 12 o'clock.

Q. X. How long would it take you to put on your coal?

A. From an hour to an hour and a half.

Q. X. Now, then, how large a coal bill did you have? Would it amount to \$20 a day?

A. From \$20 to \$25 a day.

Q. X. Now, then, you got there at two o'clock, but you could have started at three o'clock and run down to Hannibal if you wanted to?

A. The water was so low we could not run our raft before dark.

Q. X. You could have got there in time—in daytime?

A. No, sir.

Q. X. Is there any place between Quincy and Hannibal that you could have landed?

A. Yes, sir.

Q. X. Why didn't you go further down?

A. I didn't think it best to go.

Q. X. After you started with the raft and got your coal and started down, could you not have landed between there and Hannibal and made that much headway?

A. It was after dark after we got shaped up and got the fuel on, and it was not safe to run.

And being further examined by counsel for the complainant, the witness TROMLEY testified as follows:

164 Q. You was out on the river when you got that dispatch?

A. Yes, sir.

Q. Before you got to Quincy you would have to find a place for that raft?

A. Yes, sir.

Q. Which way is Quincy bay from Quincy?

A. It is north.

Q. Above Quincy?

A. Yes, sir.

Q. In order to get to the bay you would have to back up, and you would have to find a place to tie up the raft?

A. Yes, sir.

FRANK McCaffrey, a witness called on the part of the complainant, being first duly sworn, testified as follows:

Q. What is your name?

A. Frank McCaffrey.

Q. Where do you reside?

A. In Davenport, Iowa.

Q. You are a son of John McCaffrey?

A. Yes, sir.

Q. What was your occupation during 1894, the summer of 1894?

A. Part of the time I was captain of the steamboat, part of the time clerk, and part of the time mate.

Q. How many rafts were run that season from Stillwater?

A. I have no idea except what I have been told. I think there was about ten.

Q. You know this raft No. 10 being brought down?

A. Yes, sir.

Q. Do you know about it being landed in New Boston bay, one-half of it?

A. Yes, sir.

Q. When it was landed, what lines were put on it?

A. A check-line was first got out, and we finally got that fastened, and we ran out a bow line, and we came back and doubled out the check-line again and ran it out at the other end; that made two lines out of the same line.

165 Q. What was it fastened to on shore?

A. It was fastened to a cottonwood tree, both of them. We ran ashore and doubled around the same thing on the check-plate.

Q. How was it fastened at the bow?

A. By what is called bow line and inch and a quarter line.

Q. How heavy was the line from the stern of the raft?

A. I should judge an inch and five-eighths or an inch and three-quarters.

Q. Who put these lines on?

A. Who put them on?

Q. Yes, sir.

A. They were put on by the crew of the boats.

Q. Willits didn't help you?

A. No, sir.

Q. Did you go with the boat to St. Louis?

A. Yes, sir.

Q. Do you remember whether you returned or not to New Boston?

A. Yes, sir.

Q. Did the boat bring any lines back from St. Louis besides those that were taken down?

A. They brought back two lines.

Q. When you came back to the boat were there any other lines put on the raft besides those you left?

A. Yes, sir.

Q. How many?

A. As near as I can remember, we ran out another check-line of ours, and ran over with it from the raft to the shore, and we ran out another bow line of our own. We took the two lines we got in St. Louis and ran these out, and that is all the lines we ran out to the shore.

Q. Was there any lines from the boat?

A. Run out to shore?

Q. Yes, sir.

A. Yes, sir; the check-lines we ran out to the shore and fastened them on the raft, doubled it back to the boat and to the bitts on the boat.

166 Q. One rope from the boat to the raft and from the raft to the shore?

A. Yes, sir.

Q. How many lines did that make altogether?

A. There were six or seven lines, if you count the two lines together.

Q. All these lines except the two were the property of John McCaffrey?

A. Yes, sir.

Q. How was that boat fastened to the shore?

A. It was fastened with lines—check-lines there, as I have spoken of.

Q. How many lines were there from the boat to the raft?

A. There were seven lines from the boat to the raft.

Q. From the boat to the raft?

A. Yes, sir.

Q. Just describe how they were attached.

A. These check-lines went across; they were doubled over from the breastworks or check-works, and they ran a head line ahead of the boat, and they ran out two breast lines fore and aft across to keep the boat from working up and down, and then we fastened the stern line to her.

Q. Then how are these lines crossed and put out?

A. There is two of these lines on the boat that run from the boat to the check-works and fasten to a block two feet long, oak blocks made on the cribs.

Q. Which side of the boat were they on?

A. On the starboard side of the boat.

Q. How were the lines fastened on these two pieces?

A. They were run to the raft and fastened in the coupling.

Q. Where were the two lines that belonged to Schulenburg & Boeckeler Lumber Company ; where were they put on ?

A. They were both run out from the check-works on shore.

167 Q. From the check-works on the raft ?

A. Yes, sir.

Q. Who put these lines on when you came back ?

A. I did, with the men on the boat.

Q. The men on the boat did the work ?

A. Yes, sir.

Q. Under your directions ?

A. Yes, sir.

Q. Did Willits have anything to do with it ?

A. No, sir.

Q. Did you come all the way down from Stillwater on the raft ?

A. Yes, sir.

Q. Will you explain how it was about the raft being split up there, in any place ?

A. We started out from Stillwater and we came to Hudson bridge, and the river is so narrow and makes such a bend that you can't get a long raft through there, and we had no way ; it being so long, we cut in two and doubled trip down a quarter of a mile, and then came back after the other, and that is the way we brought it down. We got as far as Prescott, and we had to split it again for the bridge there and go on through with a piece, and then go back after the other piece, and from there we came down to Wabasha, and there we had to split it again on account of a bend in the river.

Q. How often did you split it above New Boston ?

A. It would depend upon how you ran the raft.

Q. How often would that raft be split ?

A. I don't know that it was split more than six times at the outside ; maybe not more than four times.

Q. How came you to leave the boat in Boston bay that winter ?

A. Leave the boat ?

Q. Yes, sir.

A. As I understand it, we got orders to come back and lay for orders, or lay there so as to run the raft into St. Louis in the spring.

Q. The orders were not given personally to you ?

A. No, sir.

168 And being cross-examined by counsel for the defendant, the witness, FRANK McCaffrey, testified as follows :

Q. X. The orders were not given personally to you ?

A. No, sir.

Q. X. To whom were they given ?

A. To the captain of the boat.

Q. X. You don't know what orders the captain received himself ?

A. No, sir.

Q. X. You was not present when he received his orders ?

A. No, sir ; but, being in the family, I knew of them.

Q. X. Was you present ?

A. No; I was not present when the orders were received.

Q. X. Now, when you went into Boston bay you tied up what you would call with three lines?

A. Yes, sir.

Q. X. One of the lines was doubled back and was practically two lines?

A. To all purposes it was two lines.

Q. X. These two lines were called check-lines?

A. Yes, sir.

Q. X. And the other was a bow line?

A. Yes, sir.

Q. X. You left the raft there?

A. Yes, sir.

Q. X. In Willits' care?

A. Yes, sir.

Q. X. He was the watchman attending to those things there, and you went down to St. Louis?

A. Yes, sir.

Q. X. When you went to St. Louis you saw two lines of Schulenburg & Boeckeler Lumber Company, and these lines were taken up and put on that raft to fasten it to the shore?

A. Not any more than ours.

Q. X. They were fastened to the shore?

A. Yes, sir.

Q. X. They tied the raft to the shore?

A. Yes, sir.

Q. X. After doing that they took some cribs out of the raft?

A. Yes, sir; four or five.

Q. X. What was the number—four or five?

A. I think I would not swear to that, but I think four or five.

169 Q. X. You don't know whether it was four or five?

A. No, sir.

Q. X. What is your best judgment about it?

A. I would not want to say whether it was five or four.

Q. X. Do you know the length of your boat?

A. I think the boat is 130 feet long or maybe 125.

Q. X. How long is the stern wheel back of that?

A. That is over all.

Q. X. Now, then, that would be pretty close if it was only four that were taken out?

A. No; not the way our wheel is built. That wheel is built so that the buckets hang six or eight feet from the crib, and slope or slip past it.

Q. X. Now, after the boat was put in you took some lines out and tied the raft to the boat?

A. Yes, sir.

Q. X. And you fastened it with the same lines which fastened the raft to the shore?

A. I don't understand you.

X Q. You had three lines on the raft which you originally put there?

A. Yes, sir.

Q. X. You fastened these lines to the boat and the same lines to the raft?

A. Yes, sir.

Q. X. Did you run any new line to the shore?

A. Yes, sir.

X Q. What line?

A. One check-line.

Q. X. Is that all you ran to the shore?

A. No, sir.

Q. X. Was that on the bow of the boat?

A. On the stern of the raft—it ran across the stern of the raft from the boat.

Q. X. That was an additional line?

A. That ran to the shore and was doubled around the check-works.

Q. X. All that line did was to go through the top of the raft or over the top of the raft?

A. No, sir.

170 Q. X. Where did it hit the raft?

A. It was fastened to the check-works and from the check-works to the shore.

Q. X. That would hold the boat steady to the raft?

A. Yes, sir.

Q. X. How many additional lines did you put out to hold the boat, when you came back with the boat?

A. There must have been seven lines.

Q. X. I am speaking of the boat—just what held the boat?

A. About seven lines held the boat.

Q. X. Seven lines protected the boat and some — them also protected the raft?

A. Yes, sir.

And being further examined by counsel for the complainant, the witness, FRANK McCaffrey, testified as follows:

Q. What is the check-works?

A. It is made of two pine sticks, called a fence, running over a drum, and this drum is 14 in. to 2 feet, with a hole in it like that (showing), and it is cut out so you can slip a line around it, and it is the only way you can stop a raft when running.

Q. X. Was you down there to help care for that raft at any time?

A. I was there on November 17; I went down there.

Q. How long did you stay there?

A. I was there until the evening of the 24th.

Q. How came you to leave then?

A. The bay was froze up at the time.

Q. When you reached there, in what condition did you find the boat and raft?

A. It was in the same condition, as far as I could see, as when I left it two weeks before.

Q. Were the same lines on there?

A. Yes, sir.

Q. The same lines were on the boat?

A. Yes, sir.

171 Q. Had there been any additional lines put on it?

A. No, sir.

Q. Who was it you hired to watch the raft and boat?

A. A man named Woods; I don't know his first name.

Q. What did you do with reference to the raft when you was there?

A. There was a couple of cribs that needed fixing and we straightened them up and put on some grub plank; that is about all—straightened up some of the deck loading.

Q. You took up the slack in the lines?

A. Yes, sir; we pulled in the slack of three or four lines; I don't remember exactly.

Q. What did you do while there during that time?

A. We were on the boat all the time, watching the boat and raft.

Q. Did either of you sleep there?

A. I was there until the evening of the 25th. That was my last night. I slept on the boat. The evening of the 26th I went to the hotel.

Q. This Woods you speak of was in your father's employ?

A. Yes, sir.

Q. He remained to look after the raft after you went away?

A. Yes, sir.

Q. Did the lines on the boat and raft remain the same after you went away as when you came there, except the taking up of the slack?

A. Yes, sir.

And being further cross-examined by counsel for the defendant, the witness, FRANK McCAFFREY, testified as follows:

Q. X. What time did you go there—the 17th?

A. I came there the evening of the 16th, but I went down to the boat the morning of the 17th.

Q. X. Who did you see—did you see Willits there?

A. No, sir.

Q. X. Was he not there while you was there?

A. No, sir.

Q. X. He never came around while you was there?

A. The first time I saw Willits was about three or four o'clock that afternoon.

172 Q. X. He was down there—he came down — three or four o'clock in the afternoon.

A. Yes, sir; on the 17th.

Q. X. He came down and looked at the raft?

A. He came down and came on the boat.



Q. X. When you was there?

A. Yes, sir.

Q. X. Did he walk across the raft to get the boat?

A. Yes, sir.

Q. X. You was on the boat?

A. Yes, sir.

Q. X. Was there anybody with you on the boat—with you when you was there?

A. Woods was on the boat.

Q. X. Did you bring Woods there?

A. Yes, sir.

Q. X. You brought him with you?

A. No; I didn't bring him with me. I went down to the boat and he came there.

Q. X. As far as you personally know, that is the first time Woods ever was there?

A. So far as I know myself.

Q. X. You say you stayed there and you slept on the boat?

A. Yes, sir.

Q. X. While you was there you saw Willits several times there?

A. Yes, sir; I saw him there.

Q. X. He came down there and looked at the raft?

A. No, sir.

Q. X. You saw him on the raft, didn't you?

A. I didn't see him; he had to go over it; he had to go over our raft to get to our raft.

Q. X. You saw him at the raft several times?

A. Yes, sir.

Q. X. Now, you was left or you left, you say, on the 24th?

A. No; I left there—on the evening of the 24th I left there.

Q. X. But you returned again, did you?

A. Yes, sir.

Q. X. And you have never been there since?

A. No, sir.

Q. X. What did you say you did with the lumber—you straightened the lumber on top—what was the matter with lumber on top?

173 A. What we call the large plank—the grun plank that bind the cribs together. A couple of these grubs had been broken, and I had taken them off and replaced them with new ones.

Q. X. Where did you get the new ones?

A. Off the raft.

Q. X. These grub planks were on top of the raft?

A. They were put on there for that purpose.

Q. X. And you took one of them?

A. Yes, sir.

Q. X. How many did you take?

A. I don't recollect the number now. I think about five, if I remember correctly.

Q. X. You put on about five?

A. Yes, sir.

Q. X. That is all you did, then, is it?

A. Yes, sir.

Q. X. You put on those five planks because you was watching the boat and raft?

A. No answer given.

Q. X. How did you put these grub on?

A. We took an auger off the boat and bored two holes in through the tier of courses and put new plank in.

Q. X. I thought you took all the things off the boat.

A. I suppose they took everything they needed. They left a few tools in the boat.

Q. X. There were a few augers on there?

A. I don't know whether that auger belonged on her or not.

Q. X. You found an auger and you bored some holes?

A. Yes, sir.

Q. X. What did you do?

A. We bored holes in the grub plank and drove wedges through so it was all right.

Q. X. You did use some of the grub plank?

A. Yes, sir; to straighten up the deck-loading a little.

Q. X. What do you mean by that?

— On the deck to put them in place.

Q. X. Were they scattered or broken?

A. We put them back in their original position.

Q. X. Do you know what the cost of this grub plank is?

174 A. I am not certain what it costs, but not very much.

Q. X. Were they broken when the raft was first put in there?

A. You very often see them broken that way.

Q. X. Were these broken when you put that raft in there?

A. They were broken when we put them in there.

HENRY WEIDHIG, a witness called on the part of the complainant, being first duly sworn, testified as follows:

Q. Where do you reside?

A. In New Boston.

Q. How long have you lived there?

A. About 15 years.

Q. Do you know where two or three little fish-houses are standing, about one mile above the landing on the river shore?

A. Yes, sir.

Q. Who owns the land next north of that along the shore?

A. I own the land part of it.

Q. I mean right north of these houses?

A. Mr. Johnson.

Q. How wide a strip has he?

A. 20 or 30 rods.

Q. How far above these old houses to does your land extend?

A. About 60 rods.

Q. Is it that far from these houses to where your land begins? How far is it above this fish-house to where your land begins?

A. It is right near the fish-house on the road where it runs down to the river.

Q. How far does that land extend north?

A. Sixty rods.

Q. North from the fish-house?

A. Yes, sir.

Q. Have you that land rented to anybody?

A. Yes, sir.

Q. By written lease?

A. Yes, sir; just the landing.

175 Q. You say you have a written lease?

A. Yes, sir.

Q. Have you got it and can I see it?

A. Yes, sir. (Hands lease to counsel for complainant.)

And being cross-examined by the counsel for defence, the witness WEIDLING testified as follows:

Q. X. Was this lease given on the day it bears date?

A. Yes; on June 6th, 1894. It was leased to the company at that time, and that lease was a renewal of another.

Counsel for the complainant offer the lease in evidence; which lease is in the words and figures following, to wit:

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*Lease.*

This agreement of lease made and entered into on this first day of June A. D. 1894, by and between Henry Weidling, of New Boston, Ill., party of the first part, and the Burlington Lumber Co., of Burlington, Iowa, parties of the second part, witnesseth.

That the said party of the first part has leased and does hereby lease unto the said party of the second part, all the shore line of outlot No. seven (7), in the city of New Boston, Mercer county, Ill., (occupying all the lands he owns bordering on Sturgeon bay), for the exclusive use of said Burlington Lumber Co., for laying by and tying lumber and logs in rafts and cribs to said shore, and to trees on said shore, and for harboring and protecting logs and lumber in said Sturgeon bay Ill. along said shore, for a term of three years, beginning on the first day of June A. D. 1894 and ending on the first day of June A. D. 1897, at a rental of \$30 per year, payable yearly in advance.

The said Burlington Lumber Co. agrees to pay to the said Henry Weidling, the rent as above specified on demand.

Witness the hands of the parties hereto to duplicate copies hereof on this 1st day of June A. D. 1894.

HENRY WEIDLING.

BURLINGTON LUMBER CO.,

By H. S. RAND, *Pl.*

Witnesses:

ED. L. WILLITS.

177 Captain J. McCaffrey, recalled, testified as follows:

Q. Did you direct Capt. Tromley to lay that boat up in New Boston bay?

A. Yes, sir.

Q. Why did you have it laid up there?

A. Why did we have it laid up?

Q. Yes.

A. It was a good place and it was handy, and it was the only place we could lay it up unless we ran it into the canal.

Q. You could take it home?

A. Take it to St. Louis?

Q. Where did you have it laid up the winter before?

A. No answer.

Q. Why did you lay the boat up in there for?

A. To run that raft to St. Louis.

Q. When did you first ascertain, by any means—when did you first hear of the assignment of the Schulenburg & Boeckeler Lumber Company?

A. I think it was on the 9th or 10th of November.

Q. Of 1894?

A. Yes, sir.

Q. After the boat was laid up in Boston bay, did you see your son or any of the crew and learn from them what arrangement had been made about the boat and raft?

A. Yes, sir; I saw them all.

Q. Did you ascertain from them what they had done with the raft and boat?

A. Yes, sir.

Q. What did you do with reference to that raft when you learned of the assignment?

A. I sent my son down there—my son Henry—to put another man on the raft.

Q. Which son?

A. Henry McCaffrey.

Q. Did you learn from the men whether Willits was sleeping on the boat?

A. He was not sleeping on any boat.

178 Q. Did you learn from the men whether he was or not?

A. I don't remember; I don't remember as I did.

Q. What was your object in employing an additional watchman down there?

A. Willits didn't get around very often watching and several rafts were there, and you could take out a dozen rafts and he would not be there.

Q. Did you give your son any directions to get a man to stay at the boat or raft any time?

A. I told him to stay there all the time, night and day, and sleep on the raft.

Q. That was your son Henry?

A. Yes, sir.

Q. Now, after that did you go to St. Louis?

A. I went down to St. Louis.

Q. Could you tell the date you went?

A. I think it was the 12th of November.

Q. You think it was the 12th?

A. On the evening of the 12th.

Q. Where did you go—who did you go to see about this business there?

A. I called on Mr. Boeckeler up at his office.

Q. Well, tell what took place.

A. Well, we talked the matter over, and Mr. Hospes was there, and we went down to his attorneys or the attorney of Schulenburg's. I think Tittman, the assignee, came in, and we talked about the thing, and they were talking about business and about settling up and going ahead in business and were going to have a meeting that afternoon.

Q. Did you attend the meeting; was you at the meeting?

A. I didn't attend the meeting. Hospes said they had made some arrangement with the banks to have a meeting. The banks had about the largest amount of money loaned to the company. I think one of them had \$100,000 and one other \$50,000.

Q. Hospes was the vice-president of the company?

A. Yes, sir.

Q. He ran the business at Stillwater?

A. Yes, sir.

Q. Let me ask you in this connection — the company had a saw-mill at Stillwater.

A. Yes, sir; that is where they manufactured the lumber.

Q. Nothing came of that meeting in the way of payment?

A. Why, no; Hospes or Boeckeler told me—I think, Hospes—that they put the meeting off.

Q. When did you first learn that it was claimed this raft was sold?

A. It was the next day after I got in St. Louis.

Q. Did you have any talk with Tittman, the assignee, about it?

A. Mr. Boeckeler was with me when we went to the assignee that day.

Q. What was said between you and Tittman about this matter?

A. I asked him what he was going to do about that raft in Boston bay.

Q. What did he say?

A. He said he didn't have anything to do with that raft; that I must see Mr. Boeckeler.

Q. Mr. Boeckeler was not present at that conversation?

A. No, sir.

Q. What did Mr. Boeckeler say when you saw him?

A. He said he had sold that raft to the Knapp, Stout and Co. Co.

Q. Anything else?

A. Yes; I had better go up and see Mr. Douglass about it.

Q. Did he say where the raft was?

A. He could not tell anything about it. Then he said they had taken the raft away, and I asked him if they took my lines, and he said he didn't know; that Douglass could tell me all about it; that

I would have to see Douglass about it.

180 Q. Where did you go to?

A. I went to Knapp, Stout and Co. Co.' office and saw John L. Douglass, the manager, there.

Q. What happened there?

A. I waited around—that was about four o'clock, and I waited until six thirty, and he was in his office all the time, but he was busy, and he didn't come out to see me. Mr. Durfly went in a couple of times and told him I was there. He told me to be seated and he would be out in a little while, and he finally came out at half past six, and I said to him, How do you do, Mr. Douglass? and he grunted and sat down. He didn't speak to me, and I told him I came up to see about the raft that he had bought. He said he had bought the raft, and I said, My lines are on that raft, and he said, I have bought all the lines on that raft. I said, You have nothing to do with my lines. I have some lines on that raft, and you have not bought them; and he said, You have not got a line on that raft. The lines you had, he said, out there on the raft are running from the boat across to shore. I told him — had lines on the raft, and I had claim on the raft, and I am going to hold it until I get my money out of it. I told him it looked to me like he had made up his mind when he bought the raft to beat me out of my money for running it, and he lifted up a chair, and Durfly went to him and told him to be quite, and he sat down. I said he had accused me of things I hadn't done, and that made him mad. He as much as called me a liar, and finally I went out, and that is all there was of the racket we had. We did have a little fuss once before, when I was running rafts -or his lumber in 1892.

Q. Tell what was said between you.

181 A. I said, I am going to see you again, and I went out and left him, and that is all that was said.

Q. Did you say anything with reference to running that raft to St. Louis?

A. He said he wanted me to keep away from the raft; that he didn't want me to run the raft there at all; he didn't want me to run it to St. Louis; that they would run it there themselves.

Q. Did you say anything with reference to running the raft?

A. I said we had a contract to run a raft to St. Louis, and I was going to run it there, and then he asked me how much my claim was against that raft, and I told him I didn't know how much it was.

Q. Did you have any further conversation with Mr. Douglass or any other gentleman at Knapp, Stout & Co. Co. about the matter?

A. Not that I remember of it.

Q. You had a contract with them at one time?

A. I had a contract with them at one time.

Q. There was some trouble growing out of that between you and Douglass before?

Question objected to by counsel for the defendant; which objection was sustained by the court; to which ruling of the court the counsel for the plaintiff then and there duly excepted.

A. Yes, sir.

Q. When did you return to Davenport after that?

A. I think I arrived there on the 16th.

Q. You left St. Louis on the 15th?

A. Yes, sir.

182 Q. When you came to Davenport did you do anything further in reference to protecting and taking possession of the raft down there at Boston bay?

A. I believe I sent Frank down there.

Q. You sent Frank down there, then?

A. Yes, sir.

Q. That was after you came back?

A. Yes, sir.

Q. He staid there until when?

A. He staid there two or three weeks.

Q. He staid there until the river froze up?

A. Yes, sir.

Q. Then, in the course of the winter, you instituted proceedings in this court?

A. Yes, sir.

Q. That succe-ding winter?

A. Yes, sir.

Q. Can you tell how much money was due the time the first half of this raft was delivered from Schulenburg & Boeckeler Lumber Co. aside from what was due on that raft?

A. Yes, sir; there was over \$4,000.

Q. This money paid at that time was applied on that indebtedness?

A. Yes, sir; certainly.

Q. How much would it be worth, in addition to what it was worth to run it down at once, to double-trip and run the raft in Quincy bay and out, than to have gone down with that raft all at once?

A. I think it would have been worth \$200 or \$300 more.

Q. In running a raft from the pineries to St. Louis what had been the custom about running or laying up any place? Where were they usually laid up when you took them down there? When you rafted them down river, were they usually laid up in case the owner didn't want them delivered at once?

A. Sometimes they laid up at the foot of Lake Pepin and some-  
time- they ran on down to Savannah—there is a good bay  
183 there—and sometimes they laid them up in Cat Tail slough.

Q. In case they were to be divided and taken one-half at a time, where were they laid up for that purpose? Where did you stop for the purpose of dividing them and laying up the other half?

A. In any good place and safe place along the river. We were



more particular in the fall than in the summer. We generally put them in any safe, convenient place, where they would be safe.

Q. Did you incur any bill for harbor charges in Boston bay after the raft was laid up?

A. Did I what?

Q. Incur any expense for harbor charges in Boston bay outside of what you was to pay Willits?

A. I paid for watching the boat.

Q. You had Woods employed?

A. Yes, sir.

Q. Outside of watching the boat did you become liable for any expense for watching the raft?

A. We were liable for watching this raft we had there.

Q. Did you employ anybody outside of Willits to attend to it?

A. Yes, sir; we had a man there by the name of Woods.

Q. You may look at this and tell me whether this is the bill for watching that raft.

A. Yes, sir.

Q. What is the amount of it?

A. The amount is \$59.34.

184 Q. You never had any settlement with Willits or any bill for watching the raft?

A. Only for watching the boat there.

Q. I will ask you if you ever made any offer to Willits to pay him for watching the raft.

A. Yes, sir.

Q. When was that?

A. That was in April, 1895.

Q. Where did that occur?

A. That took place on the raft.

Q. Who was present at that time?

A. They were all standing around there. I came down from Davenport with the steamer Duke. I heard they were going to take the raft away, and we went down there with the Duke and a lot of men to keep them from taking it away.

Q. That was before it was bonded?

A. Yes; that was along about the 10th of April.

Q. Can you name any persons, when you had this conversation with Willits, that heard you when you offered to pay him?

A. I think Jack and Frank were both there. I don't know whether anybody else heard it.

Q. When did that occur?

A. It was on the boat or close to the boat; we were sitting on the raft that came down to the boat, and I went to see Willits and he was not down there, and as I was going back I saw him coming over the raft and went down ahead of him, and I hailed him and caught up with him, and we went over on the raft.

185 Q. You had other men employed there to assist to protect your raft?

A. We had a number of them.

Q. Can you tell what amount was incurred on that account?

A. No, sir.

Q. Can you tell what men were employed on that account?

A. There must have been 40 or 50.

Q. Your son Frank was there a week at one time in the fall?

A. He was there when I came back from St. Louis.

Q. After the ice went out in the spring did you employ anybody steadily up to the time the raft was taken away?

A. We had this man Woods down there.

Q. Do you know of any others?

A. There was others; at one time we had five or six, I believe.

Q. You don't know who they were?

A. No, sir.

Q. Have you any memorandum or itemized statement by which you can show the exact amount?

A. No, sir.

Q. That you expended on this account?

A. No, sir.

186 And being cross-examined by counsel for the defendant, the witness, JOHN McCAFFREY, testifies as follows:

Q. X. You received this letter?

A. That is what I said.

Q. X. Now, this letter reads—now, I will ask you what would become of the other half of the raft.

A. What would become of it?

Q. X. What would you do unless instructions were received you would lay it up?

A. There were no instructions. Is that all the letter says?

Q. X. Is that *it* all it says?

A. If you come down with half of the raft I don't think I would run that half raft down.

Q. X. You think you would lay it up?

A. I don't think I would lay the raft up. They suggest to me to run half of it down, and I don't think that would pay me for run—I run half the raft down as they suggested.

Q. X. That means if you run one half the raft down you ran half down and laid the other up?

A. They suggested that.

Q. X. I will ask you now if you wrote that letter.

A. I did; I wrote that letter.

Q. X. Is that your signature?

A. No, sir.

Q. X. Whose signature is it?

A. My boy's.

187 Q. X. Which one?

A. Henry.

Q. X. You had it written?

A. Yes, sir.

Q. X. Now, I will ask you this question: The water was—in 1894 was it deeper in September than it was in October? Was it higher then or lower?

A. I don't remember that.

Q. X. How is it usually? Is it not usually lower in October than in September?

A. It would depend upon the rains, how they came; it all depends upon the rains.

Q. X. You don't remember whether it was lower in 1894, in September or October?

A. No, sir.

Q. X. What was the stage in the river in September, as far as taking rafts down?

A. The water was low.

Q. X. Could you take them down without double-tripping?

A. Yes; we did the double-tripping some places part of the time.

Q. X. You say in September you could have taken a whole raft down, do you think?

A. Most all the places.

Q. X. But you would have to double-trip part of the way?

A. I can't say; I was not on the river. I don't know how the river was.

Q. X. You can tell whether it would cost you \$1,500 or not. You don't know whether you could have at any time?

A. No; the pilot on the boat knows that.

188 Q. X. Now, you directed the boat to lay up in Boston bay when they came back from that trip?

A. From St. Louis?

— X. Yes, sir.

A. Yes, sir.

Q. X. Did you direct the- in St. Louis to lay up there, or where was it you gave the direction?

A. I don't know whether I wrote them in St. Louis or wrote them on the way. I think in St. Louis.

Q. X. You don't know just when the boat got in there?

A. In where?

Q. X. In Boston bay.

A. Yes, sir.

Q. X. You was not present and don't know what was done?

A. No, sir; I know what was told me.

Q. X. Where did you say *where did you say* you first heard Schulenburg & Boeckeler had made an assignment?

A. I think I was in Davenport.

Q. X. Supposing that was made on the 9th, would you hear it on the 9th?

A. I don't know whether I would or not.

Q. X. Do you think you heard it the same day it was made?

A. If it was made in the morning, I think I would have heard it.

Q. X. Don't you know you didn't hear it until the 10th or 11th?

A. How do you know I didn't.

Q. X. Don't you know you didn't — it?

A. What do you know about it?

189 Q. X. I am asking you for the facts. I am asking you, Don't you know you didn't hear of it until the 10th or 11th of November?

A. I don't remember. It seems to me it must have been between the 9th and 10th. It must have been right away I heard it. I think I heard it on the 9th.

Q. X. Suppose you heard it, did you go immediately to St. Louis?

A. No, sir.

Q. X. When did you go to St. Louis?

A. I got to St. Louis the 12th or 13th.

Q. X. When did you start?

A. I left here on the 12th or the evening of the 12th.

Q. X. And got to St. Louis on the 13th?

A. Yes, sir.

Q. X. Now, up to that time the raft and boat had not given you any bother?

A. Up to the 12th?

Q. X. Up to that time the boat had not given you any bother at any time?

A. The raft?

Q. X. The boat there—the steamboat.

A. Yes, sir; I was worried all the time about it.

Q. X. Was you worrying because somebody was going to run off with the boat?

A. I was worrying because I thought they were going to beat me out of my money.

Q. X. You didn't up to the time of the assignment?

A. Yes; I did. Old man Boeckeler had died and I thought everything was going to the dogs, and it did.

Q. X. You went down to St. Louis on the 13th, and when you got there you went to see Mr. Boeckeler, did you?

190 A. Yes, sir.

Q. X. Mr. Boeckeler told you on that same day that the raft had been sold to Douglass?

A. Don't you believe it.

Q. X. Was it not on that day?

A. No, sir.

Q. X. How many days did you stay there?

A. I was there several days. I had been in St. Louis several times.

Q. X. It was on that same day you was there he told you?

A. There you have got it wrong. I was there on the 13th all day, and I didn't hear anything about it.

Q. X. Then you was there more than one day?

A. I was there three days.

Q. X. This first day you went up and had some conversation with Mr. Boeckeler?

A. Yes; we had lots of it.

Q. X. Then nothing was said about the raft the first day at all, one way or the other?

A. No, sir.

Q. X. You say they spoke about getting a settlement of their affairs?

A. They were talking of settling up and running again.

Q. X. The next day he told you he had nothing to do with the raft?

A. Yes, sir.

Q. X. Tittman first told you that?

A. Tittman told me—he told me he had nothing to do with the raft.

Q. X. Then you asked Billy Boeckeler, and he told you the raft had been sold to the Knapp, Stout & Co. Company?

A. I talked to Mr. Boeckeler about it, and he said he had 191 sold the raft, and that it had been taken away.

Q. X. He supposed it had been taken away?

A. He didn't say suppose anything of the kind. He said it had been taken away.

Q. X. Then after he told you that did he tell you what he had sold it for—anything about that—or did you ask any particulars?

A. Yes, sir.

Q. X. What did he say?

A. I asked him how much he got for the raft, and he told us something, and I asked him what he did with the money.

Q. X. He told you the price was \$15,000?

A. I don't know whether he told me \$15,000. It seems to me it was a little more. I asked him what he did with the money, and he said, Come around here and I will show you, and I went around to where his books were.

Q. X. Then, that same day he told you, you went down to see Mr. Douglass?

A. That afternoon.

Q. X. Mr. Douglass told you when you came to see him that he bought the raft and had paid for it?

A. No; not when he came out.

Q. X. He told you he had bought the raft and he owned it and had paid for it?

A. Yes, sir.

Q. X. He also told you he had bought the lines on it?

A. Yes, sir.

Q. X. From Schulenburg & Boeckeler Lumber Company?

A. Yes; but he didn't buy my lines. He bought Schulenburg & Boeckeler's lines.

192 Q. X. Then afterwards I will ask you if you didn't in that same conversation ask him or tell him that you would like to do the towing of that flat down for him in the spring.

A. No, sir.

Q. X. That you would like to tow it down there?

A. No, sir. I said I should run the raft under my contract.

Q. X. Now, after you was down there on the 13th of November, did you send any messages of any kind to your son to go down there and guard the raft?

A. I may have done so.

Q. X. Did you—you know?

A. How do you know I know? I don't remember.

Q. X. Try to recollect if when you found that raft was sold—

when you found it was sold to Knapp, Stout & Co. Company—if you didn't telegraph to go down there and stay on the raft and watch that raft so to employ somebody to go there and watch it and guard it.

A. I think I may have done so.

Q. X. Did you do so?

A. I don't remember.

Q. X. You had your son go down on the 17th?

A. Yes, sir.

Q. X. Where was this son when you saw Schulenburg & Boeckeler?

A. Where was he?

Q. X. Yes, sir.

A. I don't know where he was. On the 13th I suppose he was in Davenport.

Q. X. Didn't you tell him to go to that raft and stay there?

A. After I came back I did.

Q. X. Was it after you came back?

A. Yes, sir.

193 Q. X. When did you leave St. Louis?

Q. X. On the 15th.

Q. X. Didn't you send word to your son Henry to go down to it?

A. That was before I went to St. Louis.

Q. X. What time was that?

A. That was on the 9th or 10th.

Q. X. Then you told your son Henry to go down there?

A. Yes, sir.

Q. X. When you heard of the assignment you told your son Henry to go down there?

A. Yes, sir.

Q. X. After that you sent Frank there afterwards?

A. Yes, sir.

Q. X. Then up to the time of the assignment you felt perfectly secure in every way, didn't you—up to the time of the assignment?

A. No, sir.

Q. X. You didn't feel secure?

A. No, sir.

Q. X. It was all quiet down there until after the assignment?

A. No, sir. I was not there and don't know.

Q. X. Now, speaking about the custom of leaving rafts or half of rafts, they leave them in as safe place as they can when you receive orders to or instructions to lay them up; after they receive instructions to lay them up you leave them in some safe place when you are going to lay them up, as a rule?

A. To lay them up for the winter?

Q. X. Yes, sir.

A. We put them in some safe place.

Q. X. When not instructed to put them in any particular place?

194 A. We put them in one of the best places we can.

Q. X. Now, as to your habit under this contract or your

custom in dealing with the Schulenburg & Boeckeler Lumber Company, you would ask them for money right along when you needed it?

A. Yes, sir; and didn't get it.

Q. X. You got money from them?

A. We didn't get it every time.

Q. X. Talking of the rafts, when you took the rafts down there, did you demand all the money on that raft all the time?

A. I don't know whether we did or not, the first raft; that is a good while ago.

Q. X. Did you refuse to give up the raft unless they paid you?

A. No, sir.

Q. X. When you took the second one down, did they pay you anything on that?

A. I suppose they did.

Q. X. Don't you know they did?

A. No, sir; some trips we made they didn't give us anything.

Q. X. Was you supposed to give it up until they did?

A. No, sir.

Q. X. You turned them right over to them?

A. Yes, sir.

Q. X. You turned the raft over to them; you took it down and you delivered it at their landing in St. Louis under the contract, when you got there?

A. Yes, sir.

Q. X. Did you refuse to deliver up any raft or any half raft or claim any lien on it on account of towage?

A. No; we didn't want to have any trouble with them.

Q. X. They just paid you money right along. If they  
195 didn't pay you all you wanted at that time, would you not draw on them and they would honor your drafts?

A. Sometimes they would.

Q. X. Did they ever dishonor a draft?

A. Yes, sir.

— Can you name one time?

A. Yes; I sent a draft down and Boeckeler knows of it, too.

Q. X. Was not that draft honored and paid when you sent a telegram to pay it afterwards?

A. Yes, sir; it was paid afterwards. I made a draft, and he would not pay the draft because there was interest on it.

Q. X. They paid you when you made drafts?

A. Yes, sir.

Q. X. That was the only draft, then?

A. Yes; but they didn't give us money when we asked for it.

Q. X. Did you pay Woods his bill of \$59.34?

Q. X. There is a small balance on it.

Q. X. Did you say \$59.34?

A. No, sir; but we are going to pay it.

Q. X. Have you paid it?

A. No, sir; not all.

Q. X. When did you first hire Woods to do that watching?

A. I think on the 9th or 10th of November.

Q. X. Did you discharge Willits?

A. No, sir.

Q. X. Did you keep Willits, too?

A. Yes, sir.

Q. X. Do you mean to say that you kept both?

A. Yes, sir.

Q. X. Now, then, you had Woods and Willits both; is that the idea?

196 A. Yes, sir.

Q. X. Now, you got other men—some 40 or 50 men. Did you pay any of them?

A. I paid them all.

Q. X. What were they for, watching?

A. We heard they were going to take the raft away, and we were not going to be left.

Q. X. You heard that, and you took a lot of men there to prevent it?

A. We heard they were going to take it away, and we went down to look after it.

Q. X. And you thought you would go down with this crew of men and prevent it?

A. We could, but we didn't.

Q. X. Did you know of Knapp, Stout & Co. Company having made a threat of any kind to go there by force and take that raft?

A. No, sir; I don't.

Q. X. I believe you stated you was down there on the 10th of April; that you was down there with these men?

A. Down where?

Q. X. To New Boston bay.

A. Yes, sir.

Q. X. I will ask you if the decree of court in this case was not entered on the 2nd of April in this very case, in which it was agreed that Mr. Douglass was to give bond to abide the result of this suit. I will ask you if the decree had not been entered on the 2nd of April.

A. I don't remember it so.

Q. X. Was you there at that time?

A. Yes, sir.

197 Q. X. You was here at court at the time that decree was made?

A. Yes, sir.

HENRY McCaffrey, recalled, testified as follows:

Q. Did you come to New Boston when that raft and boat was laid up to employ anybody to look after it?

A. Yes, sir.

Q. X. When was that?

A. On the 10th of November.

Q. Who did you employ?

A. Woods his name is.



Q. Arthur W. Woods?

A. I think that was his name. I know his last name was Woods.

Q. What did you employ him to do?

A. Why, to go down and watch on the boat and raft and sleep on the boat.

Q. Did you see Willits on that occasion?

A. No, sir; I did not.

Q. Did you make any effort to see him?

A. Yes, sir; I sent a boy by the name of Gallagher after him, but he could not find him.

Q. What did you tell Woods with reference to Willits?

A. I told him he was not to interfere with Willits, but to go down and sleep on the boat and watch the raft.

Q. You told him to stay there at nights?

A. Yes, sir.

And being cross-examined, the witness, HENRY McCaffrey, testified as follows:

Q. X. What was your object in having two watchmen?

A. To have a man sleeping there and watching at nights.

198 Q. X. The only occasion was then to have Woods employed to sleep on the boat at nights?

A. He was to sleep there at nights.

Q. X. He was not employed to watch the raft?

A. Yes; at the same time he was to watch the raft.

Q. X. Was not your object to have one man to stay at nights and one in daytime? If he was sleeping at night he would not be watching the raft.

A. He was to watch the boat and raft.

Q. X. When was that, on the 10th of November?

A. Yes, sir.

Q. X. How do you know it was on the 10th?

A. Because I received a telegram on the 10th to put a watchman on the boat.

Q. X. Have you got the telegram?

A. I think it is here; yes, I know it is.

Q. X. Let us see the telegram.

A. No answer given.

Q. X. Where was it from?

A. I think it was dated Davenport; I don't remember whether it was Davenport or Rock Island.

Q. X. Where was you when you received it?

A. I was in New Boston.

Q. X. How did you happen to be there? What was the occasion of your going?

A. Father sent me down there to put a watchman on there.

Q. X. I thought you said you did it according to a telegram?

A. I went to put a watchman on and went back home.

Q. X. Where was you when you first received the telegram?

199 A. In New Boston.

Q. X. What was the occasion of your going to New Boston?

A. To put a watchman on the boat and raft.

Q. X. What was the occasion of the telegram if you came there for that purpose?

A. I intended to stay a while.

Q. X. You came down intending to stay a while?

A. Yes, sir.

Q. X. Any particular purpose?

A. No; except to put a watchman on there.

Q. X. Then you left Davenport with that understanding, that you was going to put a watchman on the boat?

A. Yes, sir.

Q. X. Then what was the occasion of the telegram for you to put one on if you left with those instructions?

A. I don't know what his intention was in telegraphing.

Q. X. He had instructed you when you left Davenport for that purpose?

A. Yes, sir.

Q. X. When did you leave Davenport?

A. On the morning of the 10th.

Q. X. On the morning of the 10th?

A. Yes, sir.

Q. X. You say you didn't see Willits when there?

A. No, sir.

Q. X. Don't you know when you and Woods were up there you saw Willits on the raft?

A. No, sir; I didn't. I didn't see any man there anywhere.

200 Q. X. I will ask you if you and Woods were not standing on the bank after he was employed there and you was going down there and you saw Willits, and didn't you at that time and place say to Woods, That is Willits on the raft; we need not go in there?

A. No, sir; I didn't.

And being further examined by counsel for the complainant, the witness, HENRY McCaffrey, testified as follows:

A. When you came down your intention was to put a watchman on there?

Q. And your father's telegram was to put a watchman on and come home?

A. Yes, sir.

ARTHUR Woods, a witness called on the part of the complainant, being first duly sworn, testified as follows:

Q. Where do you reside?

A. In New Boston.

Q. What is your first name?

A. My first name is Arthur.

Q. Are you acquainted with Henry McCaffrey?

A. Yes, sir.

Q. Was you employed by him in the fall of 1894, at any time, to do anything?

A. Yes, sir.

Q. What was you employed to do?

A. To watch the boat and raft Robert Dodds.

Q. Where was you when you was employed?

A. I was down there by that fish-house and market, about 300 yards below where the boat and raft lay.

201 Q. There are some little fish-houses and stands up north of town?

A. Yes, sir; that is the place.

Q. This raft lay just above those?

A. Yes, sir.

Q. How far?

A. I should judge 300 yards, anyhow.

Q. Just about 300 yards?

A. Yes, sir; I think so.

Q. In your employment, what did you do?

A. Well, I kept the boat bailed out or pumped out, and put two lines out from the boat to the raft.

Q. Did you do anything about the raft?

A. Why, that's about all, I guess.

Q. Did you do anything with the lines on the raft—did you at any time take up the slack?

A. Yes, sir.

Q. Did you sleep on the boat?

A. Yes, sir.

Q. Did you have any key to the boat—did Henry McCaffrey give you a key to the boat?

A. The first night he did not.

Q. Did you get a key afterwards?

A. I got a key—I don't remember just when, but it was the night Frank came down, the night Frank came down.

Q. You got the key when Frank came down?

A. Yes, sir.

Q. How did you get into the boat to sleep in it?

A. Why, Ed. Willits let me in.

Q. He let you in. Was you going to sleep in the boat?

202 A. Yes, sir.

Q. How long did you continue in that sleeping and watching that raft?

A. From the 10th of November until the raft was taken along, about the 16th of April.

Q. During that time did anybody attempt to interfere with you in the possession of that raft?

A. Not that I know of.

Q. How long did you continue to sleep in the boat?

A. I slept in the boat 9 or 10 nights.

Q. You were still engaged in this when Frank came down?

A. Yes, sir.

Q. Did you both sleep in the boat at night when he was there?

A. We did a night or two; Frank slept there a night or so.

Q. You both slept there a night or so together?

A. Yes, sir.

Q. You slept there all the time?

A. I slept there all the time up to the 10th or 11th and it froze up, and then Frank told me I need not sleep there any longer.

Q. Do you know exactly what the dates were?

A. That I slept there?

Q. You say you slept there until the 10th or 11th. Do you know when you was employed?

A. I was employed the 10th of November—

Q. And you slept there afterwards?

A. Yes, sir.

Q. After it froze up you quit sleeping there?

A. Yes, sir.

203 Q. After the river opened up in the spring did you sleep there any of that time?

A. I slept there two or three nights.

Q. After the ice went out of the river John McCaffrey, Jr., was there all the time up to the time the raft was taken away?

A. Yes, sir.

Q. This is your bill for watching the raft that lies on the desk here?

A. Yes, sir; I guess so.

Q. Did you see the bill your attorney made out?

A. Yes, sir.

Q. This is the bill laying right there?

A. Yes, sir.

Q. What is the amount of that bill?

A. It is \$59.34.

Q. Is that a reasonable charge for the services you rendered in watching that raft?

A. Yes, sir; it was what I was to get.

Q. You had a contract with McCaffrey?

A. Yes, sir.

Counsel for the complainant offer in evidence the bill last referred to, and the same is marked Exhibit "Woods Bill," and is in the words and figures following, to wit:

204

WOODS vs. MCCAFFREY CLAIM.

NEW BOSTON, ILL., *M'ch* 14, '96.

John McCaffrey Dr. to A. W. Woods.

For labor of watching raft from Nov. 10, '94, until Apr. 18, '95, at rate of one dollar per day for the first ten days, and then at rate of ten (\$10.00) dollars per month:

Nov. 10, '94, to Nov. 20, '94, 10 days, at \$1.00 per day.....	\$10.00
Nov. 20, '94, to Apr. 18, '95, 4 months and 29 days, at \$10 per mo. ....	49.34
Total .....	\$59.34
Cr.	
By one payment of .....	\$15.00
" " " .....	15.00
Total .....	\$30.00
Am't due Woods to bal. acc't .....	29.34
	<u>\$59.34</u>

205 And being cross-examined by counsel for the defendant,  
the witness Woods testified as follows:

Q. X. What was the contract?

A. I was to get a dollar a day.

Q. X. For watching the raft and the boat?

A. Yes, sir.

Q. X. Why didn't you put in this bill watching the steamer Dodds instead of putting the raft in here?

A. I didn't make it.

Q. X. You was employed at a dollar a day to watch both?

A. Yes, sir.

Q. X. Why didn't you put in here the boat as well as the raft? Did you read this bill?

A. No; I didn't read it.

Q. X. Who made it out for you ?

A. Mr. Church, I believe.

Q. X. You don't know who made it out?

A. Yes, sir.

Q. X. Did you ever see it before?

A. This is the first time I saw it.

Q. X. This is the first time you ever saw it?

A. Yes, sir.

Q. X. The amount you think is right, \$59.34?

A. Yes, sir.

Q. X. Is that what you think is owing you?

A. It is part owing me.

Q. X. He has paid part of it?

A. Yes, sir.

Q. X. The whole amount as \$59.34, as you figured it?

A. Somewhere along there.

206 Q. X. How did you make the 34 cents? Was there any third of a day in that?

A. Not that I know of.

Q. X. How do you get the 34 cents?

A. I don't know.

Q. X. Now, then, you are sure you was employed to watch the boat and the raft. This bill for watching the raft, is that correct?

A. How is that?

Q. X. You was employed to watch the boat and the raft, and this bill only states the raft. Is that correct, or should it be the boat and raft?

A. I don't understand what you mean.

Redirect:

Q. You don't know where that bill came from?

A. No, sir.

Q. What day was you employed to watch that boat?

A. On the 10th of November.

Q. How do you know it was the 10th?

A. I don't know as I can tell.

Q. Did you put down any memorandum—anything—at that time?

A. I put down the day of the month I commenced.

Q. What did you put it down in?

A. In a book I have at the fish market.

Q. Have you got that with you?

A. No, sir; it is down at New Boston.

Q. Did you put it down on that day—the day you commenced?

A. I put it down November 10th.

Q. Are you sure that was the day, November 10th, or was it the 12th or 13th?

207 A. It was the 10th, according to the calendar.

Q. You put it down according to the calendar?

A. Yes, sir.

Q. Who employed you?

A. Henry McCaffrey.

Q. Did you see Ed. Willits at the time Henry was there?

A. No, sir.

Q. On the raft?

A. We were not on the raft.

Q. Didn't you see him on the bank? Didn't you see Willits down on the raft?

A. No, sir.

Q. You say you didn't get a key to the boat?

A. Not at the time when he hired me.

Q. You didn't get a key until Frank came down?

A. No, sir.

Q. Frank gave you the key?

A. Yes, sir.

Q. Along about the 17th or 18th?

A. About somewhere along there.

Q. Up to that time Willits let you in?

A. Yes, sir.

Q. Willits claimed to be watching the boat and had a key from McCaffrey?

A. Willits told me so—

Q. He had a key from McCaffrey ?

A. He told me he was watching the boat and raft and he wanted to know who hired me.

Q. He said he got a key from McCaffrey ?

A. Yes, sir.

Q. For the boat, didn't he ?

208 A. He didn't tell me so.

Q. X. Who did he get the key from, did he say ?

A. I didn't know he had a key.

Q. X. I understood you to say he let you in the boat ?

A. Yes, sir.

Q. X. He let you in and let you stay there ?

A. I slept there until Frank came down.

Q. X. You slept there about ten nights during the five months you was there ?

A. Yes, sir.

Q. X. Did you watch every day from the 10th of November until the 16th of April ?

A. Yes, sir.

Q. X. Was there anything said about watching the boat after the river froze up ?

A. I should think there would be.

Q. X. Was there any need of watching the raft ?

A. You can't tell ; the river is liable to break up any time.

Q. X. As long as the river was frozen ?

A. It has broke up in the middle of winter.

And being farther examined by counsel for the complainant, the witness Woods testified as follows :

Q. You was to have a dollar when you slept on the boat ?

A. Yes, sir.

Q. And a ten dollars a month afterwards ?

A. Yes, sir.

Q. Your attorney, Mr. Church, had this matter in charge ?

A. Yes, sir.

Q. Do you know whether that is his handwriting or not ?

209 A. I could not tell you ; I sent Mr. Church the bill.

Q. You sent him the bill and they sent the one you sent him ?

A. I don't know whether it is or not.

Q. You figure the price at that rate, \$1 a day, and when you slept there, and \$10 a month afterwards, and that will make \$59.34 ?

A. Yes, sir ; I guess so.

Q. You didn't have any key when Henry left ?

A. No, sir.

Q. What direction did he give you about giving you the key ?

A. I asked him to give me the key ; he wanted me to go down and put some lines out and sleep there that night, and I said to give me the keys to get into the cabin, and he said I have not got any key, and he told me to get the key from Ed. Willits.

Q. Did you apply to Willist for a key?

A. Yes, sir.

Q. Did he give it to you?

A. No, sir.

Q. Why not?

A. He said he had no orders; he said he was watching that boat and raft himself, and he had no orders to quit, and he would not give me the key, and I wrote the next day to Davenport.

Q. Is that all he said in that conversation? Who did he say he was watching it for?

A. He was watching it for John McCaffrey.

And being further examined by counsel for the defendant, the witness Woods testified as follows:

Q. X. Did he say he was watching the boat for McCaffrey  
210 or the raft for McCaffrey?

A. He said he was watching the boat and raft. I told him I was going to watch the boat & raft.

Q. X. Did he say he was watching the boat for McCaffrey, and he said that he would not give up the keys until he was discharged?

A. He said he was watching the boat and raft.

X Q. Didn't he say that he had the key; that McCaffrey had given him the key, and so far as he was concerned he would not give up the key until McCaffrey discharged him?

A. He said he would not give up the key to me until he heard from McCaffrey.

And being further examined by counsel for the complainant, the witness Woods testified as follows:

Q. What he said about the boat and raft was that he was watching them for McCaffrey?

A. That is what he told me.

Q. How did you get in to sleep?

A. He let me in the next day.

JACK McCAFFREY, recalled on the part of the complainant, testified as follows:

Q. You went back to this raft in the spring of 1895?

A. Yes, sir.

Q. Can you tell the date?

A. It was on March 11th, — think.

Q. On March 11th?

A. Yes, sir.

Q. You remained there until the raft was taken away by the Knapp-Stout & Co. Company?

A. Yes, sir.

211 Q. When you went there, on March 11th, were your lines still on that raft?

A. Yes, sir.

Q. They were there on March 11th?

A. Yes, sir.



Q. When you went there what became of the steamer Robert Dodds?

A. She laid there until along in March, the latter part of March, and I think in April she ran into Burlington.

Q. At that time you was there with Woods guarding the raft?

A. Yes, sir.

Q. Did you have anybody else employed there during the time you was there?

A. I hired nobody else.

Q. Let me ask you to refresh your memory; if you didn't have

T. B. Williams working for you?

A. Yes; T. B. Williams was there a short time.

Q. When was he hired?

A. I came up here to see you (Scott) two or three times, and Williams slept on the boat.

Q. Do you remember making arrangements for him to sleep up there after the boat was taken away?

A. Yes, sir.

Q. When that boat was taken away—by the way, the 11th of March was after the suit was commenced?

A. Yes, sir.

Q. When the boat was taken away did she take any lines away with her?

A. She took one.

Q. She took one of your lines away?

212 A. Yes, sir.

Q. What became of the other lines you had on the raft?

A. They staid there until the steamer Saturn came after the raft.

Q. What was done with the lines then?

A. They were coiled on the bark there.

Q. What became of them finally?

A. They were shipped to Davenport on the Young—on the steamer Young.

Q. On the steamer Young?

A. Yes, sir.

And being cross-examined by counsel for the defendant, the witness, JACK McCAFFREY, testified as follows:

X Q. You came there on March 11th?

A. Yes, sir.

Q. X. Where did you come from?

A. From Davenport, Iowa.

— Q. Where did you stay?

A. I staid at the hotel a while and slept on the boat.

— Q. Did you sleep on the boat every night?

A. No, sir.

X Q. You staid there at the hotel and left the steamer and raft?

A. I was at the raft most of the time.

X Q. You didn't stay on the steamer Dodds?

A. No, sir.

X Q. You staid there until the boat left—until the steamer left?

A. Until the raft left.

X Q. The raft left at what time?

A. On April 16th.

X Q. You say that Woods was the watchman?

213 A. Yes, sir.

X Q. You was also a watchman yourself?

A. I slept on the boat; yes.

Q. X. You was watching the boat that way?

A. The boat and the raft.

X Q. Now, then, a boat came there on the 16th of April and the two lines which Schulenburg and Boeckeler sent up there, which you brought upon the steamer Dodds and tied to the raft to hold it, they took that raft?

A. I don't know; I think they did.

X Q. Were you there when they took them off?

A. Yes, sir.

X Q. Did you get your lines?

A. Yes; they coiled them on the bank.

X Q. Did you go down and take your lines off?

A. No, sir.

X Q. Who took them off?

A. The mate.

X Q. Who was the mate?

A. Mr. Nelson.

X Q. He was the mate of the Saturn?

A. Yes, sir.

X Q. He took off your lines and took them on shore?

A. Yes, sir.

X Q. Did Willets assist?

A. I don't think Willets had anything to do with it.

X Q. He was there?

A. Yes; he was there at the time.

X Q. You got your lines when they were put on shore?

A. Yes, sir.

X Q. You saw them put on shore?

214 A. I saw them coiled on the bank.

X Q. You got your lines?

A. Yes, sir.

And being further examined by counsel for the complainant, the witness, JOHN McCaffrey, Jr., testified as follows:

Q. You were watching the boat and raft, both?

A. Yes, sir.

Q. The boat was so located that the raft could not be taken away without the boat being taken away first?

A. No, sir.

Q. When was that boat taken away?

A. It was taken away March 20th.

Q. The latter part of March?

A. Yes, sir.

T. B. WILLIAMS, called on the part of the complainant, being first duly sworn, testifies as follows :

Q. You know Jack McCaffrey ?

A. I know the McCaffrey boys. I don't know them apart.

Q. You know the young man that testified here ?

A. Yes, sir.

Q. You reside in New Boston ?

A. Yes, sir.

Q. Do you remember the circumstances of McCaffrey being down there watching the raft ?

A. Yes, sir.

Q. About one year ago now ?

A. Yes, sir.

Q. Was you employed by him at any time ?

A. Yes, sir.

215 Q. To watch the raft ?

A. Yes, sir.

Q. What did you do—what were your duties ?

A. My duty was to watch the raft at night.

Q. How did you do that ?

A. By sleeping right alongside of it.

Q. During how long a time ?

A. About six days, I think.

Q. That was after the boat had been taken away ?

A. Yes, sir.

Q. Do you know of the steamboat being tied to some raft at one time ?

A. Yes, sir.

Q. Did you sleep there after the steamer had been taken away ?

A. I think that is when I went up there.

Q. While the steamboat was there somebody slept on that ?

A. I don't know of that.

Q. Can you tell what time in the spring it was you staid there ?

A. About this time. I was there a week. I can't give any date. I had it in a book, but I can't find the book.

Q. What was you to do in case anybody came and disturbed the raft ?

A. I was to call McCaffrey.

Q. He was at the hotel ?

A. I was to let him know.

Q. What did you sleep on ?

A. I had a little boat out there.

216 Q. A little boat of your own ?

A. Yes, sir.

JACK McCaffrey, recalled, testified as follows :

Q. Was this time this old gentleman slept up there before or after the boat was taken away ?

A. After the boat was taken away.

Counsel for the complainant offer the bond offered by Knapp, Stout and Company Co., and is in the words and figures following, to wit:

Know all men by these presents that we, Knapp, Stout & Co. Company, of Menomonee, in the State of Wisconsin, and Charles G. Slocumb, of the county of Mercer and State of Illinois, and Isaac N. Bassett, of the county of Mercer and State of Illinois, are held and firmly bound unto John McCaffrey, of the county of Scott and State of Iowa, in the penal sum of six thousand dollars, to be paid unto the said John McCaffrey, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, the said Knapp, Stout & Co. Company binds itself, its successors and assigns, and the said Charles G. Slocumb and Isaac N. Bassett bind themselves, their heirs, executors, and administrators and every of them firmly by these presents.

Sealed with our seals this tenth day of April, A. D. 1895.

217 Whereas the said John McCaffrey has brought suit in the circuit court of Mercer county, Illinois, against the Schulenburg & Boeckeler Lumber Company, a corporation; Knapp, Stout & Co. Company, a corporation, and Eugene C. Tittman and Davis Bronson, assignees of the Schulenburg & Boeckeler Lumber Company, insolvents, claiming that he is entitled to a lien on a half raft (called in said suit half raft # 1) and the lumber, shingles, laths, and pickets on said raft, which raft is now in Boston bay, in Mercer county, Illinois, and in said suit is endeavoring to establish and enforce his claim for a lien on said half raft and the shingles, etc., on the same, and the Knapp, Stout & Co. Company claim to be the owners and in possession of said half raft, lumber, etc., and that as against the said Knapp, Stout & Co. Company the said John McCaffrey has no lien on said half raft and the shingles, etc., on the same:

Now, the condition of the above obligation is such that if the Knapp, Stout & Co. Company shall well and truly pay or cause to be paid to John McCaffrey all sums of money for which he has or had at the time said suit was instituted a lien as against said Knapp, Stout & Co. Company on said half raft # 1 and the shingles, etc., thereon, whether such lien be established in said cause now pending in the circuit court of Mercer county, Illinois, or in any other suit to which Knapp, Stout & Co. Company may be defendant or in a suit on this bond, and shall well and truly satisfy and pay all such costs as may be adjudged against Knapp, Stout & Co. Company in said cause now pending in the circuit court of Mercer county, Illinois, or in any other suit which John McCaffrey may bring against Knapp, Stout & Co. Company or on this bond for the

218 collection of the amount for which the complainant, John McCaffrey, shall have been adjudged by the court in said suit or suits to have a lien on said half raft # 1 and the shingles,

etc., ther-on against said Knapp, Stout & Co. Company, then this obligation to be void; otherwise to remain in full force and virtue.

THE KNAPP, STOUT & CO. COMPANY,  
By JOHN H. DOUGLASS, *Treas.* [SEAL.]  
ISAAC N. BASSETT. [SEAL.]  
CHARLES G. SLOCUMB. [SEAL.]

Filed in the circuit court and approved April 13th, 1895.

WM. McMANUS, *Clerk.*

Counsel for the complainant offers in evidence the receipt of the captain of the steamer Saturn; which receipt is marked Complainant's Exhibit "O," and is in the words and figures following, to wit:

219 COMPLAINANT'S EXHIBIT "O."

NEW BOSTON, ILLINOIS, Apr. 16, '95.

I have this day counted half raft bought by K. S. & Co. Co. of Schulenburg & Boeckeler, and result is as follows:

Lath-, 7,373 bdls.

Shingles, 3,773 "

Timbers, 239 pcs.

Pickets, 168 bundles.

Raft in good order.

STR. SATURN,  
GEO. WINANS, *Master.*

And here the complainant rested his case.

And the defendant, to maintain the issues on its behalf, offered in evidence the following testimony—that is to say:

220 W. L. BOECKELER, a witness called on the part of the defendant, being first duly sworn, testifies as follows:

Q. What is your name?

A. W. L. Boeckeler.

Q. What is your age?

A. I am over 40.

Q. Are you acquainted with the Schulenburg and Boeckeler Lumber Company?

A. Yes, sir.

Q. That is the contract of the Schulenburg and Boeckeler Lumber Company—or, first, did the Schulenburg & Boeckeler Lumber Company make a contract with McCaffrey about towing rafts?

A. Yes, sir.

Q. Are you connected with the Schulenburg and Boeckeler Lumber Company?

A. Yes, sir; I am.

Q. In what capacity?

A. I am secretary.

Q. Was the contract introduced in evidence, the contract made between you?

A. Yes, sir.

Q. Under that contract did McCaffrey do the towing for the Schulenburg and Boeckeler Lumber Company during the year 1893?

A. Yes, sir.

Q. Did he also during the year 1894?

A. Yes, sir.

Q. Now, I will ask you about the raft in controversy. In 221 the first place, how was your dealings with McCaffrey, as far as obtaining money was concerned?

A. Well, when a raft would come in they would usually notify us by letter or by word of mouth when the clerk arrived how much he wanted to pay off his men, and we would pay about that and let the balance stand, and then McCaffrey would draw on that afterwards.

Q. State if McCaffrey, when towing any single raft in, ever demanded the money for the towing of that particular raft before it was delivered.

A. He never did.

Q. During either of the two seasons?

A. No, sir.

Q. How many rafts did he tow the first season—about how many?

A. I should judge that he towed nine or ten.

Q. And the second season, how many?

A. About the same. I should judge about that many.

Q. I will call it in round numbers 20 rafts. During that time did he ever in any of the 20 rafts demand all that was due for the towing of that raft under the contract before he would deliver it?

A. I have no recollection that he ever did make such a demand.

Q. You would pay him as he asked you—you paid what he asked and he drew against the balance?

A. Yes, sir.

Q. Did you always honor his drafts?

A. To my recollection, we did.

Q. Was there any trouble on account of the signature?

A. He drew two drafts on us in 1893. They sent one draft 222 from Port Byron drawn by John McCaffrey, and Henry's name was to it, and we didn't think we were authorized to pay them.

Q. They were finally honored?

A. They were. We got a dispatch from McCaffrey to pay them.

Q. Now, taking this raft—this last raft—which is the only raft in controversy, when it started out at Stillwater, I wish you would tell, as well as you can tell it in your own language—you can tell better than I can ask questions—just what were the orders about that raft. Take your last telegram and go ahead.

A. Well, McCaffrey started out with that raft some time between the first and fifth of October, and the water was very low and he was

going along very slowly, and we needed the lumber at our landing on October 20th. I wrote a letter that they would have to hurry up to get down there at all.

Q. Has that letter been introduced in evidence?

A. I think it has.

Q. Is this the letter?

A. I think it is.

Q. The letter marked Complainant'- "Exhibit C" is the letter?

Y. Yes, sir.

Q. You wrote that letter?

A. Yes, sir.

Q. You may read that letter.

A.—

"ST. LOUIS, Mo., *October 20, 1894.*

J. McCaffrey, Esq., Le Clair, Ia.

DEAR SIR: We have yours of the 17th inst. and note contents: desire to say that you must have the raft here within the next seven or eight days, and you must see that you make no delay in delivering this, as the season is near the end. We therefore  
223 suggest thay you run one-half straight through to our landing instead of double-tripping. There will be too much time consumed in doing this, and the understanding with you and our Mr. Hospes was that you were to have this raft here before the first of November. We can stand no delay, and therefore please see that you get the raft here in time.

Very truly yours,

SCHULENBURG & BOECKELER L'B'R CO.  
WM. L. BOECKELER, *Sec'y.*

We cannot stand another interruption in our business; the men will become scattered, and the pulling will be prolonged into the cold weather. It is necessary, therefore, that you be here in time. Why did you wait so long so as to put the largest raft of the whole lot that you have run —? This delay, if any, will only react on you."

Q. Now, what is the instruction there?

Question objected to, as the letter shows for itself what the instructions are.

Q. What is there about tying one-half up—about tying up half the raft?

Question objected to, as the letter itself will show.

A. There is nothing in there, but it is inferred.

Q. What were the instructions there about tying up the other half of the raft?

Counsel for complainant objects, as the letter show- what it contains.

Q. What is the portion of the letter?

Counsel for the complainant objects to the question, as the letter itself will show what it contains.

224 A. On the 17th I had a letter from him.

Q. Have you the letter from McCaffrey?

A. Yes, sir; here is the letter of October 17th.

Q. You may read that letter.

A.—

LE CLAIRE, October 17, 1894.

Schulenburg & Boeckeler L. Co., St. Louis, Mo.

GENTLEMEN: Have just got back from Stillwater; left Schulenburg up there, as *she* was about wore out on this trip; boilers burned and Prescott bridge swung around as she was going through, struck her wheel braces, broke them on one side, and let wheel down so far as to crack the cylinder; timber so bad was afraid to start her down after got boilers fixed up, so let her at Stillwater to be hauled out on ways for the winter. The water here in river is cold as ice now, and it is so very low if it turns cold it will not be long before the ice will form in river. The Dodds left Reed's this morning with the raft and she ought to get here in a week or ten days. Do you want this raft delivered this fall? You have said nothing about it, and have taken it for granted you did; will keep it going down until your order otherwise, but if you lay it up would rather have it up above the rapids, as it would be safer going over in spring.

I am yours very truly,

JOHN McCAFFREY."

Q. Then your letter was in reply to that?

A. Yes, sir.

Counsel for the defendant offer in evidence the letter from McCaffrey to Schulenburg & Boeckeler Lumber Company,  
225 dated October 17th, which has been just read by the witness, and the same is marked Defendant's Exhibit "D."

Q. What was done after you wrote your letter to McCaffrey?

A. Well, there is another letter comes next from McCaffrey, dated October 26th.

Q. Is this the letter?

A. Yes, sir.

Counsel for the defendant offer in evidence the letter last referred to and the same is marked Defendant's Ex. "E," and is in the words and figures following, to wit:

DAVENPORT, IOWA, Oct. 26, 1894.

Wm. Boeckeler, St. Louis, Mo.

DEAR SIR: Your letter was just received today. I have moved down to Davenport and your letter has laid at Le Claire until today. I wrote you about the break-down we had with the Schulenburg. We lost two or three days before we could get another boat to start with the raft. In the meantime they had sawed a couple of strings, and Mr. Hospes thought it best to take the two extra strings.



We didn't lose any time on account of the two extra string-, as we would have to double-trip the upper river anyway. The low water and winds and fogs at night kept us back some. It was so late that I did not like to leave half of it out in the river alone at La Crosse, and we could run the whole of it from Bad Ax to Burlington as well as we could a half, so we will leave one half at Boston Bay and go on to St. Louis with the other half as fast as they can. The boat passed over the rapids here yesterday morning, and she ought to be in St. Louis a week from that time, the weather and water permitting.

Yours truly,

J. H. McCaffrey.

H. My address will be 1005 Brady street, Davenport, Iowa, from now on. "J. McCaffrey, H."

Q. What is the meaning of double-tripping?

A. Double-tripping means when they come to a narrow place in the river, when the water is low, they lay up one-half of the raft and proceed down river with the other piece, and then they lay up that piece and go back and take the piece they left tied up and bring it down, and that consumes a good deal of time.

Q. Sometimes they do that, and at other times that take the half straight through and leave the other?

A. That has been the custom with our boats.

Q. Has that been the custom with McCaffrey?

A. He was instructed to do so with this raft.

Q. Now I will ask you this question: What is the next thing that took place?

A. I received a postal card from Mr. Willet addressed to Schulenburg & Boeckeler Lumber Company.

Q. He says that he laid up the raft in Boston bay. What is the next thing; is that it?

227 A. Yes, sir.

Q. Is this the postal card?

A. Yes, sir.

Counsel for the defendant offer the card in evidence, and the same is marked Defendant's "F" and is in the words and figures following, to wit:

"NEW BOSTON, ILL., 10, 27, '94.

GENTS: The Robert Dodds left 8 strings of lumber, 21 cribs long, last night and departed this a. m. for St. Louis with 8 strings. Will this raft stay over winter? If so, please send two good lines up by the Robert Dodds.

Respt. yours,

E. L. WILLITS."

Q. Do you know when you received that card?

A. I suppose the next day.

Q. Who is Willits?

A. He is a man we always corresponded with at Boston bay. He always took charge of our rafts.

Q. For what purpose?

A. He was to watch them.

Q. State if Willits was in your employ.

A. He always watched for us.

Q. How long had he been in your employ and for what purpose?

A. We corresponded with him, as far back as I can remember; since 1883, he has always watched our rafts.

Q. What was he employed for?

A. For watching rafts.

Q. I will ask you this question: State if Willits was employed for the purpose of taking care of any raft that might be left  
228 for Schulenburg & Boeckeler Lumber Co. in the new Boston harbor.

A. We considered him employed if we put anything in there.

Q. Now, what was Willits to do if a raft belonging to Schulenburg & Boeckeler Lumber Company came in there?

Question objected to by counsel for the complainant; which objection was sustained by the court; to which ruling of the court the counsel for the defendant then and there excepted.

Q. What was Willits to do for the Schulenburg & Boeckeler Lumber Company?

Question objected to by counsel for the complainant; which objection was sustained by the court; to which ruling of the court the counsel for the defendant then and there excepted.

Q. Was there any arrangement made by the Schulenburg & Boeckeler Lumber Company with Mr. Willits about watching any raft; and, if so, what was the arrangement?

Question objected to by counsel for the complainant; which objection was overruled by the court; to which ruling of the court the counsel for the complainant then and there excepted.

A. My recollection is about a year previous to the signing of this contract we used to send checks to Mr. Willits for watching rafts up in there. I say that is my recollection.

Q. What was he employed for?

Question objected to by counsel for the complainant; which objection was overruled by the court; to which ruling of the  
229 court the counsel for the complainant then and there excepted.

A. Willets was employed there as a general watchman.

Q. What did the company say to Mr. Willets? What do you know of your own personal knowledge?

A. We didn't put anything in the bay for a long time—as I say, to the year preceding the contract we had an arrangement with the Burlington Lumber Company.

Q. I am speaking about Mr. Willets. Was there any arrangement with Mr. Willits?

A. About this particular raft?

Q. With Burlington Lumber Company? Go ahead about the Burlington Lumber Company.

A. They used to tax us \$300 a year for putting our rafts into that harbor. We corresponded and directed Mr. Willits what to do. We considered him the man——

Q. Well, how did Mr. Willits act there? For whom did he act in watching your lumber?

Question objected to by counsel for the complainant; which objection was sustained by the court; to which ruling of the court the counsel for the defendant then and there excepted.

Q. What did Mr. Willits do there?

A. He was a watchman.

Q. Tell what you know about the Burlington Lumber Company?

A. Mr. Willits would notify us as a raft would come in.

Q. As soon as a raft was in there you would be notified?

230 Question objected to by counsel for the complainant; which objection was sustained by the court; to which ruling of the court the counsel for the defendant then and there excepted.

Q. I will ask you to state whether or not Mr. Willits had been employed by the Schulenburg & Boeckeler Lumber Company at Boston bay?

Question objected to by counsel for the complainant; which objection was overruled by the court; to which ruling of the court the counsel for the complainant then and there excepted.

A. I don't think he had been employed direct by them.

Q. Did you employ him?

A. No, sir.

Q. Do you know whether the Schulenburg & Boeckeler Company had employed Mr. Willits?

A. No, sir.

Q. Was he employed by the Schulenburg & Boeckeler Lumber Company for any purpose?

Question objected to by counsel for complainant; which objection was overruled by the court; to which ruling of the court the counsel for the complainant then and there excepted.

A. He followed our directions what to do; he obeyed our orders.

Q. You may state whether he was in your employment and what was he doing?

A. He was working in more than one employment; he had a good many masters.

Q. At the time Mr. Willits wrote this postal card, for whom was he acting?

231 Question objected to by counsel for the complainant; which objection was sustained by court; to which ruling of the court the counsel for the defendant then and there excepted.

Q. State whether or not Mr. Willits had been watching for you in Boston Bay harbor prior to the 27th day of Oct., 1894.

A. He had been watching prior to the 26th day of October, 1894.

Q. When you received this postal card did you make any reply to it?

A. Yes, sir.

Q. Is this letter the reply?

A. Yes, sir.

Counsel for defendant offer in evidence the letter marked Defendant's "G," which is in the words and figures following, to wit:

"St. Louis, Mo., Oct. 30, 1894.

E. L. Willits, Esq., New Boston, Ills.

DEAR SIR: Replying to your postal card of the 27th inst., we desire to state that we will probably lay the raft in Boston bay over winter, in which event we will send you the lines as requested by steamer Rob't Dodds. In the meantime do everything in your power to assure the safety of same while in your possession.

Very truly yours,

SCHULENBURG & BOECKELER L'B'R CO.,  
By DANIEL F. BEHRENS."

Q. When was the postal card received by you, if you can state?

232 A. The St. Louis stamp is October 29th, 7 p. m., and we got this on the 30th, the next morning.

Q. Then you addressed that letter you have just spoken of?

A. Yes, sir.

Q. Well, *what* is the next step taken after that—after this postal card and the reply to it—what was the next thing that you heard or directions that were given so far as that part of that raft was concerned? We have one-half of it tied up; what became of the other half; what directions did you give regarding it?

A. On October 29th I telegraphed—

Q. Are these the telegrams you refer to?

A. Yes, sir.

Q. Well, what were these telegrams? Tell what your orders or directions were.

A. On October 29th we wired McCaffrey to winter raft under way in canal, otherwise any safe harbor below.

Q. That was before the receipt of the postal card we have been alluding to?

A. Yes, sir.

Q. What was the next thing?

A. Then we also wired—sometimes we used to send telegrams to the bridges, as we could not tell where the boats were—we also wired Quincy bridge. We wired on the same day, "Winter raft; you have safe harbor; is Quincy bay safe?" Then on the 29th again we wired to "come on with the raft."

Q. Now, then, what after these telegrams? These were sent on the 29th. Did you receive any reply from Capt. McCaffrey to any of them?

A. I don't recollect that I did.

233 Q. Well, then, what was the next thing after that?

A. The next thing we got a letter about the 31st. We got a letter about the 30th or 31st from Jack McCaffrey, Jr., from Clarksville, that the raft would be in soon, and he wanted \$2,000, or would want \$2,000 on the delivery of the raft.

Q. That was this letter, was it? (Defendant's "A.")

A. Yes, sir.

Q. This is Jack's letter; that was in his handwriting?

A. Yes, sir.

Q. How long after this letter came before the boat came?

A. We received it on the first of November.

Counsel for the defendant offer the letter last above referred to in evidence, and the same is marked Defendant's "A," and is in the words and figures following, to wit:

CLARKSVILLE, Mo., Oct. 31.

Messrs. Schulenburg & Boeckeler, St. Louis, Mo.

DEAR SIR: Yours of the 29th, care of the Louisiana bridge, received this morning 5 a. m., and will make raft 10 wide before delivery. Wish to get (\$2,000.00) two thousand dollars cash upon delivery of raft.

Yours truly,

J. McCAFFREY, JR.

Pass Clarksville 7.30 a. m. Will deliver Friday if nothing happens.

234 Q. Well, after that, what was the next thing after you received that letter?

A. No answer given.

Q. What does 10 wide mean?

A. That is 10 strings wide.

Q. Before delivery?

A. Yes, sir.

Q. The letter says: "Pass Clarksville 7.30 a. m.; will deliver Friday, if nothing happens." Now, what is the next thing after you got that?

A. The raft arrived November 2nd.

Q. In St. Louis?

A. Yes, sir.

Q. When it arrived was it delivered to you?

A. Yes, sir.

Q. Did McCaffrey ask you for any money then?

A. No; he had written me and asked me for \$2,000.

Q. What did you pay him?

A. I paid him \$1,000; I gave him \$1,250. I paid him \$1,000 at first, and then he came back and said that was not enough, and I gave him \$250 more.

Q. These are the checks for it?

A. Yes, sir.

Counsel for the defendant offers the two receipts in evidence, and

the same are marked Defendant's "B" and "C," and are in the words and figures following, to wit :

"ST. LOUIS, MO., Nov. 2, 1894.

Received of Schulenburg & Boeckeler Lumber Company two hundred and fifty  $\frac{10}{100}$  dollars on account running.

J. McCAFFREY, JR."

235 " \$250.00.

ST. LOUIS, MO., Nov. 2, 1894.

Received of Schulenburg & Boeckeler Lumber Co. one thousand dollars ac. John McCaffrey.

\$1,000.

JACK McCAFFREY, JR."

Q. This was after the delivery of the raft to you ?

A. Yes, sir.

Q. After the raft was towed down there you delivered that money to him ?

A. Yes, sir,

Q. Now, then, how long did the steamer Robert Dodds remain in St. Louis ?

A. I think she went out that afternoon or evening.

Q. What did you do about the lines ? In the first place, as to the payment of the \$1,250, what did McCaffrey say he wanted with that money ?

A. He mentioned he wanted the money to pay his men off, and I think he said he had some coal bills to pay.

Q. When you say men what do you mean, for the trip, or what did he say ?

A. He said to pay his men off ; that was understood it was for that trip.

Q. The coal was what trip ?

A. He said he wanted the money to pay his men off.

Q. That is what he said ?

A. Yes, sir.

Q. Now, then, when you say men what do you mean, the boat's crew ?

A. Yes, and they got provisions to take them back ; sometimes they bought them and sometimes they didn't.

Q. Now, then, about the lines ; was there anything done about the lines ?

236 A. I told them I had received a postal card from Mr. Willits.

Q. You told who ?

A. Jack McCaffrey ; I told him I had a postal card from Willits and he wanted two lines, and we wanted to winter the raft there, and we wanted him to take them back and deliver them to him.

Q. What did McCaffrey say about taking the lines up when you told him that ?

A. I don't think he objected at all, Jack McCaffrey, Jr. I told him I had instructed our man to have them brought on and put on the steamboat.

Q. They were sent on the boat ?

A. Yes, sir.

Q. They went up there ?

A. Yes, sir.

Q. Well, what was the next thing so far as the raft was concerned ?

A. Well, the raft in Boston bay ?

A. Yes ; the other raft has been delivered in St. Louis.

A. The raft in Boston bay I sold it November 5th to the Knapp, Stout and Co. Company.

Q. Did you give a bill of sale at that time ?

A. Yes, sir.

Q. You sold it on that day ; for what price did you sell it ? to Knapp, Stout & Co. Company ?

A. For \$15,000.00.

Q. How was it to be paid ?

A. I don't understand you.

Q. What was the agreement at the time ; what was said ?

A. They were to pay \$5,000 cash and give a note for four months for \$10,000.

237 Q. Payable when—how long ?

A. In four months.

Q. That was on the fifth you made the sale ?

A. Yes, sir.

Q. Was the delivery of the bill of sale of the 5th of November, or when ?

A. I think the bill of sale was left with Mr. Douglass, and the transaction the next day was closed.

Q. I will ask you if this is the bill of sale.

A. Yes, sir ; that is the bill of sale we made.

Q. State if that is the check you received.

A. Yes, sir ; that is the check and my endorsement is upon it.

Q. Is this the note that was given ?

A. Yes, sir ; that is the note with my endorsement upon it.

— Was it paid ?

A. Yes, sir ; it was paid and is marked paid on the note.

Q. What do these numbers on this bill of sale represent ?

A. They are the number of the cribs.

Q. The number of the cribs ?

A. Yes, sir.

Q. This is the number of the cribs and the lumber they contained was in there ?

A. Yes, sir ; in the 144 cribs.

Counsel for the defendant offers in evidence the bill of sale check and note last above referred to, and the same are marked Defendant's " H " and " J " and " K," respectively, and are in the words and figures following, to wit :

## DEFENDANT'S EXHIBIT "J."

The Knapp, Stout & Co. Company, lumbermen.

St. Louis, Nov. 6th, 1894.

In current funds pay to Schulenburg & Boeckeler L'b'r Co. or order five thousand dollars.

To State Bank of St. Louis, St. Louis, Mo.

\$5,000.00.

THE KNAPP, STOUT & CO. COMPANY.  
JOHN H. DOUGLASS, *Treasurer.*

## DEFENDANT'S EXHIBIT "K."

\$10,000.

St. Louis, November 6th, 1894.

Four months after date we promise to pay to the order of Mess. Schulenburg & Boeckeler Lumber Co. ten thousand dollars at Bremen bank.

Value received.

(Here name scratched and torn off.)



239

Return immediately if not correct.  
Same cash.

ST. LOUIS, Nov. 5th, 1894.

M— The Knapp, Stout & Co. Co. bought of Schulenburg & Boeckeler Lumber Co., general offices, mills yard, St. Louis Ave. & Hall St.; branch office & y'd, Eastern avenue & Sarah St.; branch office & yard, 10th and Howard Sts.

Date.	Pieces.	Size.	Length, feet.	Price.	Amount.	Total.
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144 cubic.

1 raft lumber, etc.

No.	1807	1820	1833	1846	1859	1872	1885	1898	1911	1924	1937
	1808	1821	1834	1847	1860	1873	1886	1899	1912	1925	1938
	1809	1822	1835	1848	1861	1874	1887	1900	1913	1926	1939
	1810	1823	1836	1849	1862	1875	1888	1901	1914	1927	1940
	1811	1824	1837	1850	1863	1876	1889	1902	1915	1927	1941
	1812	1825	1838	1851	1864	1877	1890	1903	1916	1928	1942
	1813	1826	1839	1852	1865	1878	1891	1904	1917	1929	1943
	1814	1827	1840	1853	1866	1879	1892	1905	1918	1930	1944
	1815	1828	1841	1854	1867	1880	1893	1906	1919	1931	1945
	1816	1829	1842	1855	1868	1881	1894	1907	1920	1932	1946
	1817	1830	1843	1856	1869	1882	1895	1908	1921	1933	1947
	1818	1831	1844	1857	1870	1883	1896	1909	1922	1934	1948
	1819	1832	1845	1858	1871	1884	1897	1910	1923	1936	1950

1,557,000 ft. 1" 1 1/2" 2" lumber, including 18 cribs of 1 1/2" & 1 1/2 in. above.

2	6	6	16	96	2	p.	8 x 10	24	320
1	"	"	20	60	7	"	"	26	1,213
1	"	"	22	66	25	"	"	28	4,667
1	"	"	24	72	3	"	"	30	600
1	"	"	26	78	11	"	"	32	2,347
2	6	8	20	160	1	"	10 x 12	22	220
3	"	"	26	312	1	"	"	24	240
8	"	"	28	896	4	"	"	26	1,040
2	"	"	30	240	10	"	"	28	2,800
2	"	"	32	256	3	"	"	30	900
1	6	10	28	140	9	"	"	32	2,880
3	8	8	24	384	1	"	"	34	340
5	"	"	26	693	3	"	"	36	1,080
28	"	"	28	4,181	2	"	12 x 12	26	624
5	"	"	30	800	10	"	"	28	3,360
4	"	"	32	683	5	"	"	30	1,800
2	"	"	36	384	6	"	"	32	2,304
3	10	10	22	550	1	"	"	36	432
4	"	"	24	800	1	"	12 x 14	26	364
5	"	"	26	1,083	2	"	"	28	784
23	"	"	28	5,367	1	"	"	34	476
5	"	"	30	1,250	1	"	12 x 16	24	384
16	"	"	32	4,267	2	"	"	28	896
3	"	"	34	850	1	"	"	30	480
1	"	"	36	300	2	"	"	32	1,024

Total 244 pes. timber, 55,543 ft.

Including all the lines which belong to our Co.

240

5,155 ft. loose lumber.....  
 61,344 " grub plank .....  
 368,100 lath.....  
 4,040 pickets.....  
 942,250 shingles .....

\$15,000

Received payment, cash..... \$5,000  
 Four months' note..... 10,000

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 \$15,000.00

SCHULENBURG & BOECKELER L'B'R CO.,  
 By WM. L. BOECKELER, *Sec'y.*

Ent. 554.

241 Q. Now, I will ask you if \$15,000.00 was the amount at which that raft was sold at Boston bay.

A. Yes, sir.

Q. After you made this sale on the 5th, did you write anything to Mr. Willits?

A. Yes, sir.

Q. Look at that and see if that is what you wrote him?

A. Yes, sir; I wrote him that letter.

Counsel for the defendant offer in evidence the letter last above referred to; which letter is marked Defendant "L," and is in the words and figures following, to wit:

" Nov. 5TH, 1894.

Mr. E. L. Willits, New Boston, Ills.

DEAR SIR: We have 144 cribs of lumber in Boston bay, numbered from 1807 to 1950, inclusive. This raft with all top-loading thereon we have sold to the Knapp, Stout & Co. Co., along with all the lines that we sent for you to tie up this raft. You will please turn this raft complete with all lines over to said Knapp, Stout & Co. Co. They will settle with you as to the storage charges.

Very truly,

SCHULENBURG & BOECKELER L'B'R CO.,  
 By WM. L. BOECKELER, *Sec'y.*"

Q. Did you have anything more to do with the raft for the Schu-  
 lenburg & Boeckeler L'b'r Co.?

A. No, sir.

Q. That ended your connection with it?

A. No, sir; we sold it and received our money for it.

242 Q. You notified your watchman and that ended it?

A. Yes, sir.

Q. Mr. McCaffrey has spoken about a conversation that he had with you in St. Louis. I wish you would go ahead and state whether he called on you and if you recollect on what date he called on you in St. Louis.

A. He called on me several times; he called last July, when the water was low—in July, I think.

Q. I mean after you made the assignment, I am speaking about that conversation.

A. I think he was there on the 12th of November. He called at our office and we had a friendly talk. I think that Mr. Hospes was there at the time and we thought we could make some arrangement to revive the business by some arrangement with the creditors, and McCaffrey was willing to let his money stay in there. We walked downtown to Schulenburg's office—his office was on 5th and Market Sts.—but Schulenburg was not there. As my recollection is, I sat down to his desk to write something and then McCaffrey said to me, What about that raft at Boston bay? and I said, I sold that raft to the Knapp, Stout & Co. Company. Immediately he said, Will you be back to the office this afternoon? and I said, Yes; and he rushed out of the office and I didn't see him until the next day. When he came back he said he had been to see Doug-

243 lass and they had a little fuss up there, and I said to him,

You had no business to go up there, McCaffrey; I sold the raft to Douglass and he is an innocent purchaser. He turned around and said, Well, I would not treat a yellow dog that way, or something to that effect. I don't think I have seen Captain McCaffrey from that time until now.

Q. You informed him then that you had sold the property at that time, as you have stated?

A. Yes, sir; I informed him then.

Q. Now, during this contract—during the time this contract has been in force—I will ask you this: From the commencement up to date, was there any rafts laid up at any place during the winter or any place through the winter or otherwise where they remained for any length of time.

A. I have no recollection that any rafts were laid up during the life of this contract.

Q. Was there ever any in Alton harbor?

A. Not through the winter.

Q. For any length of time?

A. Yes, sir.

Q. Well, now, in Alton harbor, who paid the charges on it—who had charge of the raft and paid the charges?

A. The charges at Alton harbor were to Captain McCaffrey.

Q. Why?

A. Because he brought down such large rafts—more than we could take at our landing.

Q. Was his contract limited as to the amount he should bring?

A. Yes, sir.

244 Q. You may state what it was.

A. This was a larger amount than we could take at our landing.

Q. Was it larger than the contract provided?

A. The contract says not more than half a raft of so many strings.

Q. Now, then, at Cat Tail slough, what was that at Cat Tail slough?

A. I have no recollection that we ever ordered Capt. McCaffrey to put a raft in Cat Tail slough. The only raft I remember in Cat Tail slough was a raft that was left from the season of 1892 to 1893, and was the first raft McCaffrey brought down to us under this contract, and we necessarily paid the storage to Rexford Bros. for the raft.

Q. You paid the storage to Rexford Bros.?

A. Yes, sir; the harbor charges.

Q. There was something said about a collision at the Alton bridge; what was that?

A. They brough- down that large raft of lumber and the Alton bridge was under construction and there was a piling sticking up from the water and one piece of the raft ran against the piling, and this one piece was brought down to St. Louis and the other piece was put into Alton slough, and there was a great deal of breakage on this raft which our bill calls for and for which we have our certificates at home.

Q. And you charged the breakage or loss to McCaffrey?

A. Yes, sir.

Q. As he was to tow the whole of it in safety?

A. He said at the time you ought not to charge me for  
245 that, for he could not help it, and we could not help it either.

Q. He claimed it was an accident?

A. Yes, sir.

Q. Mr. McCaffrey, one of the young men, brings a bill in here in which there is a claim of \$93.31, and item of grub plank on some 288 cribs of lumber. I wish you would talk about that and state whether or not that is correct.

A. That is not correct, to charge us with the grub.

Q. Why? State how the grub plank is put in, how it is fastened in, and how the other lumber is fastened in with the grub plank. Is it considered a part of lumber or not?

A. We paid Capt. McCaffrey at the rate of 450 feet to the course, and these grub planks held these courses together, top and bottom; they went lengthways and crossways.

Q. Did it form part of the course?

A. It was understood to do so.

Q. That is the way you put it down?

A. We never allowed that in any of our bills that we credited them with the last two years; we never allowed him for the grubs and he never objected to the credits. When they came in we always deducted the grubs.

Q. Have they claimed credits previous to this bill?

A. This is the first we ever heard of it, in this bill.

Q. I am asking you whether or not you know whether there was any grub plank on them.

A. Not in the sence that I consider grubs. I consider grub such

plank. Grub plank is plank that has at least three holes bored in it to couple the grubs together, to put through grub pins—that is, a pin projecting through the lumber; but we always had a deck load of some 2 by 4 and some 2 by 8 and No. 1 dimension lumber, and this lumber was allowed Capt. McCaffrey and never deducted as grub.

Q. That is in this last lumber?

A. Yes; the last lumber on top.

Q. This letter of the 30th of October, it appears to be signed Schulenburg & Boeckeler Lumber Co., by D. F. Behrens. You have seen that letter. Now you may state who dictated that letter.

A. I dictated that letter.

Q. Who is the man who signs it for the company?

A. He was our cashier.

Q. Let me ask you, also, if you sent the telegram to Willits also?

A. Yes, sir.

Q. What was the occasion? How did you happen to send this telegram?

A. I sent that to Willits. I wanted to be doubly sure. I was excited and nervous at the time. I had a great many things that I was troubled over.

Q. Did Mr. Douglas or any of them call to see you about the matter, and who?

A. Yes; Archie Douglass came to see me and told me that they had not heard from Willits, and then I said I will just wire him; which I did.

Q. You sent a telegram to Willits?

247 A. Yes, sir.

Q. Is this the telegram?

A. Yes, sir.

Counsel for the defendant offers the telegram in evidence, and the same is marked Exhibit Defendant's "W" and is the words and figures following, to wit:

"ST. LOUIS, MO., Nov. 9th, 1894.

E. L. Willits, New Boston, Ill.

We sold our entire raft in Boston bay, with top loading complete, and all lines, to the Knapp, Stout Lbr Co. Company, on Nov. 5th. They should have possession on and after that date.

SCHULENBURG & BOECKELER  
LBR CO.,

By WM. L. BOECKELER, Sec."

Q. I will ask you if you have the original claim that was presented by McCaffrey to the assignee.

A. Yes, sir.

Counsel for the defendant offer in evidence the original claim of the plaintiff McCaffrey filed with the assignee, and which original claim is marked as Exhibit "X" and is in the words and figures following, to wit:

248 STATE OF MISSOURI, }  
*City of St. Louis,* } ss.:

Eugene C. Tittman, of lawful age, being duly sworn, upon his oath deposes and says that he is the duly appointed and qualified assignee of the Schulenburg & Boeckeler Lumber Company, acting as such under a deed of assignment for the benefit of the creditors of said Schulenburg and Boeckeler Lumber Company; which deed of assignment is dated the 9th day of November, 1894, and is duly recorded in the recorder's office of the city of St. Louis, Missouri, in Book 1231, page 532 *et sequ.*

That he did, in accordance with the laws of the State of Missouri, give the proper notice to all creditors of said Schulenburg & Boeckeler Lumber Company of the time and place where he would receive, hear, and adjust claims of creditors against said assigned estate.

That on the 28th day of January, 1895, being one of the days designated by him for the hearing of such claims, there was presented to and left with him, as such assignee, by John McCaffrey, through Messrs. Lubke & Muench, attorneys-at-law, a claim of said John McCaffrey against said assigned estate of said Schulenburg & Boeckeler Lumber Company, of which claim the annexed is a true and exact copy; and further deponent says not.

EUGENE C. TITTMAN.

Subscribed and sworn to before me this 28th day of March, 1895; and I further certify that I am authorized under the laws of Missouri to administer oaths and *affidavits*.

WILLIAM F. HEIDMAN,  
*Notary Public, City of St. Louis, Mo.*

My commission expires Jan. 23, 1898.

249 STATE OF MINNESOTA, }  
*County of Washington.* }

District Court, First Judicial District.

In the Matter of the Assignment of SCHULENBURG & BOECKELER LUMBER COMPANY, Insolvent.

*Proof of Claim of John McCaffrey, of Le Claire, Iowa.*

STATE OF IOWA, }  
*County of Scott.* }

On this — day of December, 1894, before me personally came John McCaffrey, who, being by me first duly sworn, on oath says that at and before making the assignment in this matter by the above insolvent, The Schulenburg & Boeckeler Lumber Company, it was and now is justly and duly indebted unto the said John McCaffrey in the sum of twenty-four thousand five hundred fifty-eight dollars and thirty-nine cents (\$24,558.39), with interest thereon from and after the dates hereinafter set forth, on the respective items compos-

ing said gross sum, at the rate of seven per cent. per annum; that the items composing said gross sum are as follows, and were incurred in pursuance of the following facts:

250 First. The sum of eight thousand dollars thereof in pursuance of that certain contract bearing date April 6th, 1893, made between said insolvent and this affiant, wherein and whereby said affiant was to have the towing of certain rafted lumber of said insolvent from Stillwater, Minn., to St. Louis, Mo., and by the terms of said contract said insolvent covenanted to and with this affiant that this affiant was to have furnished to him by said insolvent seventy-five million feet of rafted lumber, to be by him towed to St. Louis, Mo., during the three years or seasons succeeding the date of said contract, for which he was to receive from said insolvent the sum of one dollar twelve and one-half cents per thousand feet for such towing; that in pursuance to such contract and the covenants so made by insolvent, affiant commenced the work so stipulated to be by him performed, and during the season of 1893 and 1894 affiant towed of said lumber all of the amount so stipulated to be by him towed, except the amount of twenty-seven million eight hundred and twenty-five thousand two hundred and eight feet; that affiant has been, now is, and at all times has been ready to carry out the terms of said contract, but by the insolvency of said insolvent has been prevented from so doing; that by reason of insolvent's failure to so furnish the said lumber in pursuance of said contract affiant has been damaged to the amount of eight thousand dollars, the amount which he would have made as profit on towing the remaining twenty-seven million — two hundred and eight feet.

251 Second. The sum of seven thousand dollars, amount stipulated in said contract to be refunded of the purchase price paid for the steamers Charlotte Boeckeler, Helen Schulenburg, and Robert Dodds, which the affiant purchased of the insolvent, and paid for, to do said towing, and which account was to be repaid to said affiant in the event that there was no towing to be done for insolvent by affiant after the year 1895.

Third. The sum of two thousand seventy-two dollars and eighteen cents, an amount due and unpaid on work, labor, and services performed during the season of 1893 and 1894 for said insolvent as part performance of said contract, a statement of which account is hereto attached, marked Exhibit "A."

Fourth. The sum of three thousand seven hundred and forty-nine dollars and seventy-three cents, and amount due as counter-charges for loss of time and extra services on performance of contract caused by acts of insolvent and towing of lumber not credited in schedules of rafts as given to affiant; all as shown by a statement of said various items contained in a statement hereto attached and marked Exhibit "B."

Fifth. The sum of three thousand seven hundred and thirty-six dollars, due for towing raft designated as number ten by said insolvent from Stillwater to St. Louis and containing three million two hundred and thirty-eight thousand three hundred and seventy feet

in raft and eighty-two thousand nine hundred and forty-four feet in grub plank during the season of 1894.

252 That all of said sums, with interest from date hereof, at seven per cent. per annum, is so due over and above all payments, counter-claims, and set-offs whatever; and affiant says that for the said indebtedness the said John McCaffrey has not nor has any person by his order or for his use or benefit had or received any manner of satisfaction or security whatever except for the amount due on running said raft number ten, the basis of claim number five, \$3,736.48, for which amount affiant claims a lien for towing the whole of said raft on one-half of said raft, which is now lying in harbor at New Boston, Illinois, and which claim affiant retains the right to enforce.

A copy of the contract entered into between affiant and said insolvent is hereto attached and marked Exhibit "C" and made a part hereof; that all of said exhibits are hereto attached and hereby made a part hereof.

Subscribed and sworn to before me this — day of December, 1894.

\_\_\_\_\_  
Notary Public, Scott Co., Iowa.

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## EXHIBIT "B."

*Counter-charges against Schulenburg & Boeckeler Lumber Company.*

1893.		
April 18.	Crown Coal & Towing Co., pulling off raft...	\$5.00
Oct. 31.	Overcharge Str. Thos. Parker, dropping pieces from Alton.....	40.00
Nov. 15.	Alton Harbor Co., watching raft, 144 cribs..	37.80
1894.		
June 20.	Alton Harbor Co., watching rafts.....	70.56
July 28.	Dropping two pieces to Carondelet.....	50.00
April —.	Shortage, raft No. 1, delivered April 1st, 13,262 feet, at \$15.00.....	198.93
	Shortage in shingles and lath-, 29,700, at \$2.00.	59.40
1893.		
Aug. 8.	Raft No. 6 stuck at mill; lost 20 hours getting it off.....	200.00
Sept. 1.	Raft No. 7 in five pieces; lost nine and one-half hours getting it ready.....	95.00
Sept. 28.	Raft No. 8 in four pieces; lost ten hours getting ready.....	100.00
April 27.	Coupling raft No. 1.....	\$30.00
Sept. 1.	Coupling raft No. 7.....	50.00
Sept. 28.	Coupling raft No. —.....	50.00
Oct. 21.	Coupling raft No. 9.....	50.00
		<hr/> 180.00



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Season 1893.	1,784 cribs, 18 pieces grub plank in each crib, 32,112 pes., 2" x 6" x 16, 513,792 ft., at \$1.12½ . . . . .	578.01
Season 1894.	2,099 cribs, 18 grub plank to a crib, 37,782 pes., 2" x 6" x 16", 604,512 —, at \$1.12½ . . . . .	680.00
Season 1894.	Lost ten days for overloading raft No. 6. . . . .	800.00
		<hr/>
		\$3,094.78

1894.

July 7.	Raft No. 5 in two pieces above Stillwater bridge; lost four hours in coupling. . . . .	40.00
Aug. 1.	Raft No. 6 in three pieces at Hershey's mill, above Bay Town, and at S. & B. mill; lost 12½ hours. . . . .	125.00
Aug. 14.	Raft No. 7 — 6 hrs. dropping and coupling. . . . .	60.00
Aug. 28.	Raft No. 8 lost 11 hours dropping and coupling. . . . .	110.00
Sept. 17.	Raft No. 9 lost 20 hrs. dropping and coupling. . . . .	200.00
Oct. 13.	Raft No. 10 lost 12 hrs. dropping and coupling. . . . .	120.00
		<hr/>
	Total . . . . .	\$3,749.70

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## EXHIBIT "A."

Schulenburg &amp; Boeckeler Lumber Company to Jno. McCaffrey.

1893.

Nov. 16.	Balance due. . . . .	\$1,035.64
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1894.

April 17.	Running 252 cribs, 26 deep. 2,948,400	
	Deck loading. . . . . 57,300	
		<hr/>
		3,005,700 @ 1.12½ 3,381.44

## Raft I.

April 20.	190 cribs, 26 deep. . . . . 2,223,000	
	2 " 24 . . . . . 21,600	
	Deck loading. . . . . 119,040	
		<hr/>
		2,363,640 @ 1.12½ 2,659.09

## Raft II.

May 15.	192 cribs. . . . . 2,242,124	
	Deck loading. . . . . 77,037	
		<hr/>
		2,319,161 @ 1.12½ 2,609.05

## Raft III.

June	3.	224 cribs.....	2,616,182	
		Deck loading.....	75,905	
			<hr/>	
			2,692,087 @ 1.12½	3,028.59

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## Raft IV.

June	15.	240 cribs.....	2,792,475	
		Deck loading.....	99,165	
			<hr/>	
			2,891,640 @ 1.12½	3,253.08

## Raft V.

July	6.	231 cribs....	2,701,238	
		Deck loading.....	115,568	
			<hr/>	
			2,816,806 @ 1.12½	3,168.90

## Rafts VI, VII, VIII.

240 cribs }	.....	5,979,644 @ 1.12½	6,727.10
120 " }			
160 " }			

Bro't forward..... \$25,862.89

## Raft IX.

248 cribs....	2,802,666 @ 1.12½	3,152.99
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\$29,015.88

Schulenburg & Boeckeler, cr. by statement... 26,943.70

Balance due Jno. McCaffrey..... \$2,072.18

257 This agreement, entered into this sixth day of April A. D. 1893, by and between Schulemburgh and Boeckeler Lumber Company, a corporation created, organized and existing under and by virtue of the laws of the State of Missouri, and John McCaffrey, of Le Claire, in the State of Iowa, witnesseth:

That said McCaffrey, for and in consideration of the sale and conveyance to him by said lumber company of three certain steamboats, viz: "Helen Schulenburg" "Charlotte Boeckeler" and "Robert Dodds," together with all their tackle, apparel and furniture thereon, which sale and conveyance has this day been made for the sum of seventeen thousand five hundred (17,500) dollars, and the said parties covenant and agree to the following:

First. That the said McCaffrey will receive and tow all the rafted lumber and said lumber company will furnish to him at or below their mill at Stillwater, Minn., and tow same to the landing owned or occupied by the said lumber company at St. Louis, in the State of Missouri, and there deliver the same to said lumber company in

quantities not exceeding one-half a raft at a time (unless said lumber company shall be prepared to receive a larger quantity) in as good order and condition as the same may be received by him at the point where the same is delivered to him for towing. Said McCaffrey shall not be held responsible for any loss or damage to any lumber so delivered to said lumber company for towing, which shall be occasioned by the action of the elements, or unavoidable accidents which could not be prevented by the said McCaffrey by the exercise of reasonable diligence.

258 Second. That when any lumber is delivered to said McCaffrey for towing rafts he will tow the same from the point of such delivery to St. Louis aforesaid, and there deliver the same in quantities as aforesaid, without any unnecessary delay and make all reasonable efforts to deliver the same fast enough so as to keep the lumber-pullers of said lumber company in St. Louis aforesaid steadily employed, low water and the elements excepted, and he will do all work of towing said lumber and delivering the same as aforesaid by and for the following prices and sum, that is to say,

Third. For all rafts of lumber delivered to said McCaffrey at Stillwater, Minn., one dollar twelve and one-half cents ( $1.12\frac{1}{2}$ ) per thousand feet, board measure, for the lumber contained in such raft, the amount of lumber (other than lumber that may be deck-loaded) to be estimated as four hundred and fifty (450) feet board measure for each inch in thickness of rafted lumber in each course of cribs sixteen by thirty-two (16 x 32) feet. Said price of one dollar twelve and one-half cents per thousand feet board measure for the lumber to include all charges for lath-, shingles, pickets grub and coupling plank, or other lumber product which may be loaded on said raft, except lumber; lumber which is deck-loaded shall be paid for at the rate aforesaid according to the actual scale thereof. It is understood that the said lumber company will not overload the crib with deck-loading so that the crib will sink in consequence thereof.

259 For all rafts of lumber delivered to said McCaffrey for towing pursuant to this agreement, at any point below Stillwater, Minn., a price which shall bear the same proportion to the number of miles from the point of such delivery, to St. Louis, as the sum of one dollar twelve and one half cents per thousand feet board measure to the number of miles from Stillwater to St. Louis.

It is further understood that said lumber company shall couple the cribs into the sizes of the raft- as the said McCaffrey may direct, and it is also understood that the said lumber company will use all due diligence to keep this lumber afloat at Stillwater, and the raft- shall be fitted up and made ready for the boats.

Said lumber company is to give said McCaffrey the towing of seventy-five million (75,000,000) feet of rafted lumber during the three years first succeeding the date of this contract, and further agrees to give said McCaffrey the towing of all lumber which said company may raft to St. Louis that may run over the seventy-five million feet during the three years first succeeding the date of this contract.

Said McCaffrey shall pay all harbor, wharfage and other charges which may accrue against any lumber delivered to him for towing between the points of such delivery and the point herein specified for the delivery thereof to said lumber company, except in case where said McCaffrey shall be directed by said lumber company to tie up and leave rafts at points at or near Alton or other places, in which case the said lumber company shall pay all harbor charges on rafts so tied up at the point where said McCaffrey may be so directed to leave same.

That in case of any damage to or loss of lumber from any raft delivered to said McCaffrey for towing, pursuant to the terms of this agreement, the amount of such damage or loss shall be ascertained and agreed upon at the time of the delivery of the lumber at the landing of said lumber company at St. Louis, Mo., and such damage for loss or breakage shall be paid for by said McCaffrey at the market price of lumber.

If at any time said McCaffrey shall have any lumber in Alton slough, or at any other point in the vicinity of St. Louis, and shall be unable to deliver the same promptly, on being notified so to do by said lumber company, said lumber company may procure any other party or person to tow this lumber from Alton or other points to its landing at St. Louis, aforesaid, and shall be entitled to deduct from the price of towing such lumber the sum of sixty dollars, from each half raft from Alton slough, and a sum proportionate per mile as sixty dollars is to the number of miles from Alton slough to St. Louis, from any point above Alton slough.

In the event that said lumber company continues to ship lumber in the raft during the season of 1896 and 1897, to give said McCaffrey the towing of an aggregate of one hundred and twenty-five million (125,000,000) feet or over, of rafter lumber during the seasons of 1893 to 1897 inclusive, and at the same price and conditions as in this contract aforesaid, then it is agreed that the said

lumber company makes no refund of cash to said McCaffrey.

But in the event that said lumber company only continues to ship lumber in the raft during the season of 1896, and discontinues the shipping of lumber during the season of 1897, then said lumber company is to pay said McCaffrey the sum of four thousand five hundred (\$4,500) dollars. In the event that the said lumber company discontinues the running of rafts after the season of 1895, then said lumber company is to refund to said McCaffrey the sum of seven thousand (\$7,000) dollars.

In view of the fact that George Brasser has been engaged by said lumber company to command the steamer "Robert Dodds" for the season of 1893, it is agreed that said McCaffrey will assume all liabilities on the part of said lumber company towards said Brasser. Said Brasser is to do the same kind of work as any other first-class pilot will do, and shall work as second or head pilot on any boat that said McCaffrey may direct. Said Brasser is to receive sixteen hundred dollars (\$1,600.00) for the season's work.

Fourth. That all the covenants and agreements of the respective parties hereto herein contained, shall apply to and bind the heirs,

executors, administrators, successors and assigns of the parties respectively, as fully and completely as if such heirs, executors, administrators, successors and assigns had been specifically mentioned in connection with each covenant.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

— — —  
— — —

In the presence of—

— — —  
— — —

262 Schulenburg & Boeckeler Lumber Company, Jno. McCaffrey, credit.

## CR.

1893.			
Nov.	1.	By cash .....	\$1,200.00
1894.			
Mar.	31.	" " .....	700.00
Apr.	20.	" " .....	600.00
May	15.	" telegrams .....	.95
"	2.	" cash .....	1,000.00
"	15.	" " .....	1,000.00
"	21.	" Theo. Parker .....	60.00
"	25.	" cash .....	2,000.00
June	2.	" " .....	1,000.00
"	4.	" " .....	20.00
"	5.	" shortage & breakage acc't .....	198.93
"	"	" " " " .....	59.40
	16.	" Crown Coal & Tow Co. ....	10.00
	19.	" telegrams .....	.50
	20.	" Wm. L. Boeckeler .....	8.00
	20.	" Alton Harbor Co. ....	70.56
	26.	" Jack .....	10.00
	26.	" cash .....	1,000.00
July	7.	" Consolidated Coal Co. ....	10.00
	19.	" cash .....	1,500.00
	25.	" whar-age .....	40 65
	28.	" Theo. Parker .....	25.00
Aug.	1.	" cash .....	1,500.00
"	7.	" W. L. Boeckeler to J. Me. ....	5.00
	22.	" cash .....	3,000.00
	24.	" shortage and breakage raft V ...	33.00
	31.	" Stillwater bill ...	214.17
			<hr/>
			\$15,266.16

263 And being cross-examined by counsel for complainant, the witness, WM. L. BOECKLER, testifies as follows:

Q. X. Where did you get that, Mr. Boeckeler?

A. This original claim that has been filed with Assignee Tittman.

Q. X. Mr. Tittman is the assignee in the insolvency proceedings?

A. Yes, sir.

Q. X. This is the claim Mr. McCaffrey presented to him?

A. Yes, sir.

Q. X. It was presented to the assignee for McCaffrey?

A. Yes, sir.

Q. X. There is no file-mark on there showing the date or anything of that kind?

A. No, sir; it was filed in time—I was there at the time. Mr. Titman just loaned that to me.

And being further examined by counsel for the defendant, the witness BOECKLER testified as follows:

Q. Do you know when it was left there?

A. It was left there within three days that Mr. Titman advertised—I think that was on the 28th, 29th, and 30th, or the 27th to the 29th, inclusive.

And being further cross examined by counsel for the complainant, the witness, WM. L. BOECKLER, testified as follows:

Q. X. All that you know was that he had a claim and it was taken and handed to Titman, the assignee?

264 A. I know Judge Lubke, McCaffrey's attorney, told Tittman they didn't want to proceed with this.

Q. X. All you know it was handed to the assignee?

A. It was exhibited.

Q. X. It was presented to him?

A. Yes, sir.

Q. X. Now, a piece of the raft struck the Alton bridge?

A. Which raft?

Q. X. This first raft which came down in the spring of 1893.

A. All of the first raft?

Q. X. Yes, sir.

A. I could not say which one it was—

Q. X. I am speaking about the raft you testified about a moment ago that struck one of the tiers of piles—when was that—when was that, Mr. Boeckeler?

A. I think that was in 1893.

Q. X. You think it was in the spring of 1893?

A. In the spring or summer.

Q. X. You directed that raft to be laid up there, didn't you?

A. Which?

Q. X. That half raft they put in Alton slough.

A. The half raft I did. We could not take it; it was too much or us.

Q. X. The contract provided in substance that the rafts shall be divided and one-half delivered at a time?

A. Yes, sir.

Q. X. And that necessitates them laying up the other half some place, don't it?

265 A. Yes, sir.

Q. X. You say it was the half that struck that pier they brought in?

A. Yes, sir.

Q. X. Are you sure where the raft struck the pier?

A. The one at Alton?

X Q. You don't know whether half of it struck or what it was?

A. Yes; I know.

X Q. How did you find it out?

A. They told me themselves.

X Q. Who told you?

A. Young McCaffrey.

Q. X. Which one?

A. Jack, Jr.

X Q. He told you the piece they brought in last was the one that went against the pier?

A. Yes, sir.

X Q. What did he say it went against?

A. That it sheered against the piling and struck it—the false works.

X Q. You say this raft left—they started with this raft from Stillwater some time about the 10th of October?

A. About the 5th to the 10th—about that time.

X Q. How did you find that out?

A. I am just guessing at that on account of the time it takes them to run down.

X Q. You are just guessing at that?

A. Yes, sir.

266 X Q. Didn't you make a duplicate of that statement in your office or didn't you get a duplicate of that statement in your office?

A. Yes; but I didn't look up the records very carefully.

X Q. Look at that statement.

A. Yes; I see that is October 13th.

X Q. That is when they received the raft?

A. Yes; that is when they took that raft.

X Q. From the saw-mill?

A. Yes; that must be the raft.

X Q. Now, you say this contract provided for the delivery of half of a raft of a certain number of strings at your landing down there. Just point that out in the contract, will you?

A. It is this first: that the said McCaffrey will receive and tow all the rafted lumber said lumber company will furnish to him at or below their mill at Stillwater, Minn., and tow the same to landing owned or occupied by the said lumber company at St. Louis, in the State of Missouri, and there deliver the same to the said lumber com-

pany in quantities not exceeding one-half raft at a time, unless said lumber company shall be prepared to receive a larger quantity, "in as good order and condition as the same may be received by him at the point where the same is delivered to him for towing."

X Q. Is there anything in relation to the number of strings in that which you have read?

A. It say- a half a raft.

X Q. You said one-half a raft and so many strings?

A. We split the raft in halves.

X Q. The raft may be six or eight strings, a whole raft?

267 A. Yes, sir.

X Q. During this season or these seasons of 1893 and 1894 McCaffrey did do all your towing, Mr. Boeckler?

A. I think he did.

X Q. Don't you remember the circumstances of a raft being laid up in Cat Tail slough in the winter of 1893 and 1894?

A. I don't recollect it, as I said before; if it was laid up there the records will show it.

X Q. Have you your correspondence with McCaffrey during this period?

A. Have I all the correspondence?

X Q. You didn't bring a copy of your correspondence?

A. I only brought the correspondence in relation to this raft in question.

X Q. You say that you paid his drafts when he drew on you?

A. Yes, sir.

X Q. There was never any contract with you for any credit; they never made any arrangement to extend the time?

A. We would pay him about what he wanted generally—what he wanted on the trip—and he would come down and the balance would remain to his credit.

X Q. Is it not true that you frequently requested him not to draw?

A. During the panic of 1893 he came down alone and we had some talk together, and he was very nice, Mr. McCaffrey was, when money was tight.

X Q. Didn't you frequently request him not to draw on you?

268 A. I don't think so frequently; we did two or three times.

X Q. During 1893 didn't you try to get him to take your note at six months?

A. I don't remember that.

X Q. Look at this letter and see if you remember writing a letter of which this is a copy.

A. I presume that is a correct copy of a letter I wrote; it looks like a letter I wrote, and I presume I did.

X Q. You wrote him a letter in substance like that?

A. Yes, sir; I think so.

Counsel for the complainant offers in evidence the letter last referred to, and the same is marked Plaintiff's Exhibit "P," and which letter is in the words and figures following, to wit:



"JUNE 20, 1893.

Capt. J. M. McCaffrey, Le Claire, Iowa :

The Dodds came in with the raft. We owe you a balance on this raft of 2,115.42 and would ask you not to draw for the amount, as the stringency is still on, our expenses are heavy, being cash outlay all the time, and collections are very slow. If you would take our note for a short time we will allow you int. at 8 % from the 19th, and as soon as money gets easier we shall be able to collect what is due, as all our outstanding accounts are good, being secured by the mechanics' lien law. As soon as money gets easier we shall pay you cash on demand. Trusting you will comply with our request, we remain,

Very respectfully,

WM. L. BOECKLER."

X Q. You wrote such a letter ?

269 A. Yes, sir ; I think that is substantially what I wrote.

X Q. What did you say about it ?

A. I think that is the sense of it.

CX Q. This talk that was had down at St. Louis between you and McCaffrey, of which he spoke and in which he said he was willing to let his money stay in the business—that suggestion was made on the basis that you would get some arrangement with the creditors to allow you to conduct the business ?

A. We thought we could make such arrangement ; we had talked with the different creditors to feel them——

X Q. That arrangement you didn't succeed in making ?

A. It took a long time to get things in shape, the inventory and other matters.

X Q. What business are you in there now ?

A. In the lumber business.

X Q. For yourself ?

A. Yes, sir.

X Q. Individually ?

A. No, sir ; it is a corporation.

X Q. What is the style of the present corporation ?

A. It is called the Boeckler Lumber Company.

X Q. There is a number of harbors along the Mississippi between Stillwater and St. Louis where rafts are laid up, are there not ?

A. Yes ; I should judge so ; there are some quite good harbors along the river.

X Q. There is one at Alton ?

A. Yes ; the one at Alton is not a good one ; it is a good place to hold a raft—to hold it for a short time.

270 X Q. It is a good place to hold it until you are ready to have it delivered at the wharf ?

A. Yes, sir.

X Q. There is another at Quincy bay ?

A. Yes, sir.

X Q. A good harbor ?

A. Yes, sir.

X Q. And the canal ?

21—263

A. Yes; that is a good winter harbor.

X Q. And Boston bay?

A. Yes, sir.

X Q. And the Cat Tail slough?

A. Yes, sir.

X Q. All these harbors have a watchman to watch rafts when they are put in?

A. I don't know whether the one at Quincy bay has, but I think the others have.

X Q. They watch whatever rafts are put in the harbor?

A. Yes, sir; I think so.

X Q. Willits' custom was the same at New Boston bay as that — the other places, so far as you know?

— Yes, sir.

X Q. You testified that the custom that existed at these places was not the same custom. Didn't the same custom obtain at Boston bay?

A. It was the same in Boston bay.

X Q. It was at this time?

A. It was all the times Willets took charge of our rafts.

X Q. When you put rafts in other harbors, the watchman took charge of them?

A. Our boat took charge of it; we left it to them.

271 X Q. When you put your rafts in the watchman there took charge of them?

A. Yes, sir.

X Q. You didn't pay the Burlington Lumber Company \$300.00 for 1893 or 1894?

A. No, sir.

X Q. During 1893 and 1894 you didn't pay Willits a cent, did you?

A. No, sir.

X Q. During 1893 and 1894 did you make any contract with Willits to watch any raft for you?

A. I think not.

X Q. During those two years you didn't have to make any contract with the Burlington Lumber Company to watch any rafts for you?

A. No, sir.

X Q. At the time you sent that telegram you had not received Ed. Willets' card?

A. No, sir.

X Q. At the time you sent the telegram you didn't know any part of that raft was laid up in Boston bay?

A. Yes, sir.

X Q. Do you mean you did or did not?

A. We were informed by McCaffrey's boy by letter of the 26th that he would put in there with a half and come on with the balance.

X Q. You didn't say anything in the telegram about the other half coming on?

272 A. No, sir; I didn't. We wanted to save all words we can.

X Q. On what day did you first discuss this matter with Mr. Douglas of making the sale to him?

A. On the 5th of November.

X Q. On the 5th of November?

A. Yes, sir.

X Q. Where did that discussion take place?

A. Up in his office. I went up there with a schedule of this raft and with this bill.

X Q. With the schedule and this bill?

A. Yes, sir. They were not shown you yesterday.

X Q. When you sent these lines up by Jack McCaffrey you told him you wanted him to take them up there to help hold the raft?

A. No. I told him that I had a postal card from Willits; that we wanted to winter the raft there, and that he should take up these lines to Willets, and we wanted them delivered to him, and he said all right.

X Q. Was you present when the lines were delivered to McCaffrey?

A. No, sir. My man delivered them. I gave him orders to deliver the lines.

X Q. Who did you give the order to?

A. To James Gleason.

Q. X. In what capacity was he in your employ?

A. He was foreman on the river; attended to that business to watch rafts when they pulled out the lumber. He had charge of everything on the river landing.

Q. X. He had charge of the landing?

A. Yes, sir.

273 Q. X. What you intended to do was to comply with the request on the postal card?

A. Yes, sir.

Q. X. And that called for two lines?

A. Yes, sir.

Q. X. It was in response to that you sent the two lines?

A. Yes, sir; and also wrote that he was to attend to it.

Q. X. You knew the size of that raft up there?

A. Yes, sir.

Q. X. You knew the two lines would not be sufficient to hold the raft like that through the winter?

A. Two good lines in a harbor with no current is pretty good support to a raft.

Q. X. Did you know where this raft was tied up?

A. I don't know exactly where it was tied up. I knew we had put in Boston bay and Willits would take care of it.

Q. X. You have been past New Boston frequently?

A. Yes, sir; not gone into it.

Q. X. You have never been in the bay?

A. No, sir.

Q. X. You never stopped at the town?

A. Not to my recollection.

Q. X. Do you mean to say that two lines would be sufficient to tie up a raft like that over winter?

A. We tied up the same kind of a raft.

Q. X. Do you want to be understood that way?

A. Yes, sir.

Q. X. You don't know where it was lying?

274 A. No, sir.

Q. X. You don't know whether there was any current or not?

A. No, sir; but I don't think there was.

Q. X. But you don't know anything about it?

A. No, sir. Two lines are good enough for us to tie up with at St. Louis, and a strong current pulling against the raft.

Q. X. That is, in St. Louis, where you have your men pulling it out of the water as fast as they could?

A. Yes, sir.

Q. X. You say you went up there on the 5th?

A. Where?

X Q. To Mr. Douglass's office.

A. Yes, sir.

Q. X. You hadn't any communication from Willits after this postal card?

A. No, sir.

Q. X. Now, that is the only communication you had received from him?

A. Yes, sir.

Q. X. You didn't know anything of your own knowledge—of your own personal knowledge—what lines were on that raft?

A. No, sir. I took it for granted our lines were put on there.

Q. X. But you didn't know anything about that?

275 A. No, sir.

Q. X. You didn't make any inquiries to ascertain?

A. No, sir.

Q. X. Did you ascertain from Jack McCaffrey where they were going to leave the boat?

A. No, sir.

Q. X. What time in the day did you call at Mr. Douglass's office?

A. I called at noon.

Q. X. How long an interview did you have with him?

A. About half an hour or so.

Q. X. Did you strike this bargain at that time?

A. We did.

Q. X. You told him where the raft was?

A. Yes, sir.

Q. X. And sold it to him for \$15,000?

A. Yes, sir.

Q. X. \$5,000 in cash and this note you have introduced here?

A. Yes, sir.

Q. X. Was the \$5,000 paid that day?

A. No, sir.

Q. X. Was the note given that day?

A. No, sir.

Q. X. Was the bill of sale left that day?

A. I think it was.

Q. X. Then when was the money paid?

A. The next day.

Q. X. And the note given at the same time?

A. Yes, sir.

Q. X. Now, this last telegram you sent to Willits—the last introduced in evidence. You say you sent it on the date of it upon Archie Douglass coming to you and telling you they hadn't heard from Willits?

A. Yes, sir.

Q. X. Who is Archie Douglass?

276 A. He is Mr. Douglass's son.

Q. X. Son of John H. Douglass?

A. Yes, sir; I met him very often.

Q. X. This \$10,000 note you speak of was paid, was it?

A. Yes, sir.

Q. X. Who was it paid to?

A. Who was it paid to?

Q. X. Yes, sir.

A. I don't know who it was paid to; it was stamped paid.

Q. X. You don't know, of your own personal knowledge, it was paid?

A. I know I discounted it.

Q. X. Where did you discount it?

A. At the German Savings Institution.

Q. X. When was it discounted?

A. I think on the 6th of November; I think I discounted it the same time the check was deposited.

Q. X. Look at this letter (Defendant's "L"). You didn't make any representations to Mr. Douglass about lines aside from your personal knowledge about the matter?

A. What kind of representations do you mean?

Q. X. You didn't tell him anything about the lines?

A. I took it for granted the lines on there was ours. I sold it in good faith.

Q. X. You did not tell him anything about these lines you  
277 didn't know to be true—you didn't tell him anything except what you know to be true?

A. To my best knowledge.

Q. X. You made a memorandum on the margin of this bill about the lines?

A. Yes, sir.

Q. X. What is that memorandum about the times?

A. Including all the lines belonging to our company.

Q. X. That had reference to the lines on the raft?

A. Yes, sir.

Q. X. How much lumber was there in that raft, Mr. Boeckler?

A. Well, I should judge about a million and a half feet.

Q. X. As it appears from the bill, how many feet was it?

A. 1,557,000 feet; 55,000 feet dimension lumber; 5,155 loose lumber, grub plank, lath, pickets, and shingles.

Q. X. Was all the lumber in that raft one inch except the deck-loading?

A. No; there was inch and a quarter and inch and a half stuff.

Q. X. What was that lumber worth in the market by the 1,000 ft.?

Question objected to. Overruled and exception noted.

A. No answer given.

Q. X. What was that raft worth by the 1,000 feet?

A. It was worth what we got for it.

Q. X. How much a thousand feet does it figure, what you got for it?

A. It figures about \$9.50 a thousand; between \$9 and \$9.50 a thousand feet.

Q. X. How many shingles were there?

278 A. There were about 942,000.

Q. X. Figure out what they were worth.

A. No answer given.

Q. X. Suppose you get \$9, would it be worth \$9.50 a thousand? What would it be worth in St. Louis?

A. Rafted lumber in St. Louis sells for—No. 1 dimension at \$18.50 a thousand, and for No. 2, \$2 less. A good deal of this was No. 2.

Q. X. You say from \$8.50 to \$9.50?

A. Dimension No. 2 from \$8.50 to \$9.50 in the raft delivered in St. Louis.

Q. X. What was the market price? Are you speaking of 1894?

A. I am speaking of recent sales of 1894.

Q. X. You are talking now of the fair market price?

A. Of Stillwater lumber in 1894.

Q. X. Figure what the shingles were worth, the 942,000 shingles.

A. They were mostly No. 1 shingles. I don't think the shingles in this raft would bring over 75 cents a thousand.

Q. X. What were these worth?

A. I should judge those shingles would be worth from 90 cents to a dollar a thousand on the market.

Q. X. Did you say it was worth a dollar a thousand?

Q. X. Yes; I would say a dollar a thousand.

Q. X. That would make \$942.00.

A. Yes, sir.

Q. X. 4,000 pickets—what are they worth?

A. They are worth, common pi-kets—they will — in St. Louis at \$10—worth about \$8 or \$7.50, I would say, in the raft.

279 Q. X. Were these all good pickets?

A. Ye-, sir; they were full packages.

Q. X. They were worth \$30?

A. Yes, sir.

Q. X. 368,000 lath—what are they worth?

A. I don't know whether they were No. 1 or No. 2, so I can't tell

very well. We were making No. 2 lath up there. I can't tell how many No. 2 there were.

Q. X. Do you know what class they were?

A. No, sir; I don't.

Q. X. So you didn't tell Mr. Douglass whether they were No. 1 or No. 2?

A. No, sir; I don't.

Q. X. You just took the lath without saying anything about the quality?

A. Yes, sir.

Q. X. What is the fair price of No. 2 lath?

A. No. 2 lath on the raft are worth—

Let the record show that the testimony now offered is for the purpose of attacking the good faith of the sale of the Schulemburg & Boeckler Lumber Co. to the Knapp, Stout & Co. Co.

Counsel for the defendant object to the testimony; which objections was sustained by the court; to which ruling of the court the counsel for the complainant then and there excepted.

Q. X. On what date did you make the assignment?

A. On the 9th.

Q. X. That as the same day as this telegram to Mr. Willits?

A. Yes, sir.

280 Q. X. You say the grub plank is considered a part of the course. When you measure the depth of the cribs you don't measure the grub plank, do you?

A. No, sir; but they are never counted.

Q. X. Is it customary to carry some grub and coupling plank on top of the raft to use in case of a break-up?

A. Yes; we put on dimension 2 x 8, 2 x 6, and 2 x 4; we received them on other rafts that McCaffrey brought down.

X Q. Was it not customary to put grub and coupling plank on top of the raft?

A. Do you mean grubs with holes in them?

X Q. I don't care whether the grub planks has holes in them or not. Does a grub plank have to have a hole in it to be a grub plank?

A. Yes, sir.

By the COURT: Is it customary to carry these planks for the purpose of repairing the raft in case of a breakage?

A. Yes; it is customary to throw on a few dimension timber. I know we almost always put lumber on top that we don't call grub plank.

X Q. It is carried for that purpose, to repair any breakage, as suggested?

A. It was carried down and brought to our yards, and in case of necessity they could use it.

X Q. You throw on some of them?

A. Yes; lots of them.

X Q. You said a few moments ago you threw on a few.

A. Not of grub plank.

X Q. Didn't you mean to put on a few of them?

281 A. We never received grub plank on top of a raft.

X Q. Was it not customary to put on grub plank and coupling plank in case of a break-up?

A. No, sir.

X Q. What is a coupling plank?

A. That would be about the same as a grub plank, a plank with holes in it.

X Q. They had these planks playing on it which they could use in case of a break-up?

A. No, sir; not for that purpose.

X Q. When a plank has some holes in it you call it a grub plank?

A. Yes, sir.

X Q. You have no personal interest in this suit?

A. Personal interest?

X Q. In this particular suit.

A. No, sir. How do you mean personal interest? Pecuniary interest?

X Q. I mean what you mean by personal interest. Have you any personal interest in the matter?

A. No, sir.

X Q. You have taken a good deal of interest in the conduct of the case?

A. I have an interest because I sold this raft to Douglass.

X Q. You have assisted the attorneys in trying it?

A. I was requested to bring all papers that pertained to the case.

X Q. You came from St. Louis up here to testify?

A. Yes, sir.

X Q. When McCaffrey came back after he had been to see  
282 Douglass you said that he was an innocent purchaser right there, and you told him he ought not to have gone and seen Douglass?

A. I felt that way.

X Q. Why was it any of your business if he went to see Douglass?

A. Because I had sold the raft to Douglass in good faith.

Q. X. What business was it of yours what happened between McCaffrey and Douglass? What business was it of yours what occurred between McCaffrey and Douglass?

A. I felt kindly towards Douglass, and I felt kindly towards McCaffrey at all times.

X Q. You told McCaffrey you sold this raft, and you say you didn't say anything further about it — all?

A. Down at Schulenburg's office I sat down at a desk. How long I remained there I don't know. I went back into the office, and he asked me about the raft, and I told him I had sold it, and then he went out the door, and I didn't have time to talk to him.

X Q. What did he say to you about the raft in the first instance?

A. He said to me, What did you do about the raft in Boston bay? and I said, I have sold it to Knapp, Stout & Co. Co., and he said, How long will it be before you will be back to your office? and I



said, In the afternoon, and he left and didn't give me time to talk to him.

X Q. After you told him about Douglass being an innocent purchase and about you having sold the raft to him he said he would not treat a yellow dog that way?

A. Yes, sir.

X Q. He was referring to your conduct in the matter?

283 A. Yes; he was referring to my conduct, I suppose.

X Q. Didn't you tell him that the raft had been taken away from Boston bay in that conversation?

A. Which conversation?

Q. Either one of them.

A. It must have been a later conversation if he said so. I don't remember it; I can't testify to that.

X Q. You can't tell whether that occurred or not?

A. No, sir.

Q. Didn't you tell him at the time you told him about the sale that he would have to go up and see Mr. Douglass about that raft; that he could tell him all about it?

A. No, sir, because I would not have talked to him that way afterwards.

X Q. Did you tell him that Douglass could tell him about the rafting of the raft?

A. I don't remember that.

X Q. You told him you didn't have anything further to do with it?

X Q. He didn't give me any time.

X Q. Didn't you tell him you had nothing further to do with it one way or the other in this conversation?

A. I don't think I told him that. I told him that it was not in my possession.

X Q. Didn't you tell him that you had nothing further to do with it one way or the other in this conversation?

A. I didn't tell him anything in Schulenburg's office of that kind.

X Q. When did you tell him that?

A. I don't think I told him that.

284 X Q. You don't know whether you did or not tell him that?

A. I don't think I did.

X Q. You sent a second telegram or this telegram to Willits for the purpose of protecting Douglas' interest or the interest of the Knapp, Stout & Co. Company?

A. Archi- Douglass met me and said they had not heard from Willits.

X Q. I am asking you what your purpose was. Was not that your purpose?

A. Yes; of course it was.

X Q. McCaffrey had rendered services in reference to that raft, and you never took occasion to notify him about the sale at any time until he came and asked you about it?

A. I made that sale. I could do anything with it, and I had authority to do so. I had to have money, and I sold it.

X Q. I simply say you didn't consider it necessary to notify Capt. McCaffrey?

A. No, sir; I didn't notify anybody.

X Q. Your contract provided for the delivery of the lumber in St. Louis?

A. Yes, sir.

X Q. And no other place?

A. Yes, sir.

X Q. You didn't get an answer from the telegram you sent to Willits?

A. No, sir.

And being further examined by counsel for the defendant, 285 the witness, WM. L. BOECKLER, testified as follows:

Q. Did the Schulenburg & Boeckler Lumber Company ever have lumber in the Boston Bay harbor during the years 1893 and 1894, before this was put in?

A. I believe not, in 1893 and 1894.

Q. That raft is the only one that went in there, in Boston bay?

286 A. Yes, sir.

Q. Now, you state that two lines would hold this raft in St. Louis?

A. Yes, sir.

Q. I will ask you if the current in St. Louis is not very strong there?

A. Yes; it is a very strong current at our landing.

Q. How is it as compared with Boston bay?

A. I have never been in Boston bay, but from all information I can gather from pilots and others it is a very safe harbor.

Q. How would it be in the open river, with a strong current, as compared with the harbor?

A. I would think it was considerably safer in a harbor than in the open river.

Q. In other words, the lines would hold it easier in the harbor than in the open river?

JOHN H. DOUGLASS, a witness called on the part of the defendant, being first duly sworn, testified as follows:

Q. What is your full name?

A. John H. Douglass.

Q. What is your business?

A. I am a lumberman.

Q. What office, if any, do you hold in the corporation known as the Knapp, Stout and Co. Company?

A. I am treasurer.

Q. Has the Knapp, Stout and Co. Company any headquarters, and where is its headquarters?

A. At Menominee, Wisconsin.

Q. Have they branches outside of Menominee, Wisconsin?

A. Yes, sir.

287 Q. Where?

A. Several up in Wisconsin, on the Mississippi at Dubuque, Iowa; Fort Madison Jn. and St. Louis, Missouri.

Q. In St. Louis, Missouri—who manages the business there?

A. I do.

Q. You have charge of the management there?

A. Yes, sir.

Q. You are also treasurer of the company?

A. Yes, sir.

Q. I wish you would state whether Mr. Boeckeler came to see you on the 15th of November, 1894, and what was the talk between you—just tell what was done.

A. Mr. Boeckeler, in the forenoon of the 5th of November, called at our office. We had some little talk or interview on ordinary topics—one in particular about the loss of his father—and he said they were somewhat bothered on account of the loss of his father, and that he needed the money. I told him that he had struck us at a bad time; that we were hard up at that time. He then offered a raft of lumber that he had in Boston bay, saying that he had made some effort to borrow money, and that he had concluded to sell their raft in Boston bay.

Q. Did he present you any statement of the lumber at that time and show you what was in the raft?

A. He did.

Q. State if you examined it.

A. Yes; I examined it. It was what they call a raft number ten at Stillwater. He said they had half of it down at their landing and the other half in Boston bay, and that it was very  
288 similar lumber to what they had at their landing. I said to him I would go their landing and see the lumber, which I did.

Q. You went down and examined it?

A. I went down and examined it. They were drawing it out then. They hadn't drawn out much. They had a good deal of it lying in the water. I looked over the raft and the lumber on the landing. I told him that we had plenty of lumber and did not need to buy—that we were really not wanting to buy. He said that they were very much in need of money, and I finally asked him what he would take for the raft, including shingles, laths, and pickets on the same. I asked him what he would take for the same, and he said he would take \$15,000. We talked a little while, and I suppose I said to him that we had use for our money, and we agreed at the time that I should probably raise him \$5,000, and would give him our note at four months for \$10,000 in place of the balance of the cash. He said that that would do him, and we bought the raft. He went away and he said he would bring up a bill and he would check off just what there was and he would be up in the morning—that he would see just what there was in raft number ten in Boston

bay. The next morning he came up and brought up the invoice of it and showed me what was the quantity of the lumber they had in New Boston bay, and I settled with him for it by giving him a check for \$5,000 and our note for \$10,000, payable in four months.

289 —. The check and note is the same one, and this bill of sale he gave you is the same that is referred to in Exhibit Defendant's H?

A. Yes, sir.

Q. That is the bill of sale?

A. Yes, sir; that is the bill of sale.

Q. I will ask you what do these numbers mean on here?

A. Those are the numbers of the cribs that he offered to us.

Q. That was contained in the raft?

A. Yes; that were contained in the raft—the half that was laid up in New Boston bay.

Q. Each crib is marked with figures running at, for instance, from 1807 on down, consecutively; what are those figures?

A. You mean 1807, 1808, 1809, and so on?

Q. Yes. What are those figures?

A. They are the numbers of the cribs; there are 144 cribs.

Q. There are 144 cribs?

A. Yes, sir.

Q. How much lumber does a crib contain?

A. A crib contains 11,000 and some odd feet.

Q. This check that you gave is the same check marked "Exhibit J," is it not?

A. Yes; Knapp, Stout & Co. Co., check number 11045 on the State Bank of St. Louis for \$5,000.

Q. The note is marked "Exhibit K"?

A. Yes, sir.

Q. And that is the same note that was given at the time?

A. Yes, sir.

Q. Where was the note paid?

A. I think it was paid at the Breman bank. We gave our check for it.

Q. Now, after you purchased that raft and settled for it, what did you do after having purchased that lumber?

A. We notified Mr. Willits by postal card.

290 Q. You immediately notified Mr. Willits by postal card?

A. Yes; by postal card.

Q. You sent him this postal, did you?

A. Yes; dated St. Louis, November 6th, 1894.

Counsel for defendant offers in evidence postal card, which is marked "Defendant's Exhibit Y" and which postal is in the words and figures following, to wit:

The Knapp, Stout & Co. Company, lumbermen, Salisbury St., near the river.

ST. LOUIS, Mo., Nov. 6th, 1894.

DEAR SIR: We have bought and paid Schulenburg & Boeckeler Lumber Co. for raft lumber and its top loading; they claim to have in your charge in New Boston bay and have their order to us on you for delivery of said raft, etc. (& their ropes that tie it), to us; therefore you will please accept this notice and take charge of said raft for us from this date.

Yours truly,

THE KNAPP, STOUT & CO. COMPANY,  
Per JOHN H. DOUGLASS, *Treas.*

Addressed:

E. L. WILLITS, Esq.,  
*New Boston, Ills.,*

291 Q. Who is E. L. Willits?

A. E. L. Willits is a watchman of rafts in New Boston bay and has watched rafts for us a good many years for our company.

Q. Did you have other rafts in there at that time?

A. Yes, sir.

Q. Who was watching that raft?

A. E. L. Willits was watching.

Q. He was watching that raft for you?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. When you wrote him this postal, it was for him to take charge of this raft for you?

A. Yes, sir.

Q. Afterwards, did you write Mr. Willits a letter, or what was the next step you did after you wrote that postal card?

A. My recollection is we sent Howard Baker up to New Boston to count over the numbers and to see if everything was in place, and to see if it tallied with the invoice?

Q. What day did you send him?

A. I think we sent him on the night of the 9th.

Q. Who is Howard Baker?

A. He is a man in our company, employed as foreman about our yard in St. Louis. We sent him up there to count the lumber.

Q. He went up on the 9th of November?

A. Yes, sir.

Q. Did he return?

A. Yes, sir.

Q. When did he return?

A. He returned, he told me, on the Sunday morning following.

Q. Did you see him?

A. I saw him Monday morning.

Q. He told you he got in the Sunday previous?

A. Yes, sir.

Q. Did he return anything to you when he got back?

A. Yes, sir.

292 Q. Did he make a return of the lumber?

A. Yes, sir.

Q. Is that the paper (showing paper)?

A. Those are the papers.

Q. How did the count that he made and the return that he made correspond with Boeckeler's statement?

A. It fell a little short—a very little short—of what the invoice called for.

Q. These papers were a little short of what the bill of sale contained?

A. Yes; it was.

Counsel for the defendant offers in evidence statement by Howard Baker and which is marked Defendant's Exhibit "Z" and is in the words and figures following, to wit:

293

1807	1841	1871	1901	1931
8	2	2	2	2
9	3	3	3	3
1810	4	4	4	4
1	5	4	5	5
2	6	5	6	6
3	7	6	7	7
4	8	7	8	8
5	9	8	9	9
6	1850	9	1910	1940
7	1	1880	1	1
8	2	1	2	2
9	3	2	3	3
1820	4	3	4	4
1	5	4	5	5
2	6	5	6	6
3	7	6	7	7
4	8	7	8	8
5	9	8	9	9
6	1860	9	1920	1950
7	1	1800	1	
		1		
8	2	2	2	
9	3	3	3	
1830	4	4	4	
1	5	5	5	
2	6	6	6	
3	7	7	7	
4	8	8	8	
5	9	9	9	
6	1870	1900	1930	

294

7 Loose lumber, about 5,155 feet.

8 244 timbers, " 55,543 feet.

9 368,100 laths " "

1840 942,250 shingles, about.

4,040 pickets, about.

318 blds., clear.

1,171 " S. &amp; B., x a x

1,774 " Stillwater, x a x

506 " x a x S. &amp; B. L'b'r Co.

3,769

942,250 shg.

368,100 lath.

3,550 sq. pkts.

640 flat pkts.

242 timbers.

1 line 600 ft. 1 1/2.

1 " 400 " 1 1/2.

2 6/6 16

1 6/6 20

1 " 22

1 " 24

1 " 26

2 6/8 20

3 6/8 26

8 6/8 28

2 " 30

2 " 32

5 12/12 30

6 " 32

1 " 36

1 12/14 26

2 " 28

1 " 34

1 12/16 24

2 12/16 28

1 " 30

2 " 32

1 6/10 28

244

55,543

295

3 8/8 24

5 " 26

28 " 28

5 " 30

4 " 32

2 " 36

2 8/10 24

7 " 26

25 " 28

3 " 30

11 " 32

3 10/10 22

4 " 24

5 " 26

25 " 28

5 " 30

Boston bay.

	16	"	32	
	5	"	34	
	1	"	36	
	1	10/12	22	
	1	"	24	
	4	10/12	26	
	10	"	28	
	3	"	30	
	9	"	32	
	1	"	34	
	3	"	36	
	2	12/12	26	
	10	"	28	
296	3	6 x 6	16	
	1	"	20	144
	1	"	24	60
	1	"	26	72
	1	"	28	78
	1	6 x 8	20	80
	5	"	26	520
	6	"	28	672
	2	"	30	240
	2	"	32	256
	1	6 x 10	28	140
	3	8 x 8	24	384
	6	"	26	832
	24	"	28	3,584
	3	"	30	480
	5	"	32	853
	3	8 x 10	24	480
	7	"	26	1,213
	25	"	28	4,667
	7	"	30	1,400
	9	"	32	1,920
	3	10 x 10	22	550
	2	"	24	400
	7	"	26	1,517
	24	"	28	5,600
	6	"	30	1,500
	15	"	32	4,000
	2	"	34	567
	1	"	36	300
	1	10 x 12	22	220
	2	"	24	480
	3	"	26	780
	8	"	28	2,240
	4	"	30	1,200
	11	"	32	3,520
	1	"	34	340
	3	"	36	1,080



4	12 x 12	26	1,248
10	"	28	3,360
4	"	30	1,440
4	"	32	1,536
1	"	36	432
1	12 x 14	26	364
2	"	28	784
1	"	34	476
1	12 x 16	24	384
2	"	28	896
1	"	30	480
2	"	32	1,024
<hr/> 242			<hr/> 54,793 ft.

297 Q. After the return of Baker, you say you wrote Willits a letter?

A. Yes, sir.

Q. I hand you a letter and ask you if this is the letter you wrote to Willits after the return of Baker.

A. Yes; it is.

Counsel for the defendant offered in evidence letter last above referred to, which is marked "Defendant's Exhibit V" and which letter is in the words and figures following, to wit:

ST. LOUIS, Mo., Nov. 12th, 1894.

E. L. Willits, Esq., New Boston, Ills.

DEAR SIR: Mr. Baker returned on Sunday & this morning reported you, and he counted the rafts we bought of Schulenburg and Boeckeler Lumber Co. on 5th inst., which we paid for in full; also for the rope that secures it to the New Boston shore land; also produced your receipt to us for said raft, its top loading, and the ropes that fasten it to the shore land; says he handed you our letter and d'fts, which we sent to settle your acc't of watching, but did not bring a receipt for same, nor does today's mail bring a receipt; kindly mail receipt to us. Four days after we bought raft and ropes from and paid S. & B. Lumber Co. for them they made an assignment, to the astonishment of ourselves and others.

298 Capt. J. McCaffrey has been here claiming several things and went away threatening to make us trouble and expense.

Yours truly,

THE KNAPP, STOUT & CO.  
COMPANY.

JOHN H. DOUGLASS, *Treas.*

Therefore we request you to safely preserve S. & B. Lumber Co.'s letter of 5th inst. authorizing you to turn raft & ropes (that secures it to shore land) over to us; also their telegrams of the 9th inst. to you that Mr. Baker says you said you had rec'd, as it's possible these papers and your evidence may hereafter be required. Please remember all that you know of as having occurred, also what Mc-

Caffrey may say, and talk as little as possible about the matter, much obliging—

Your truly,

JOHN H. DOUGLASS, *Treas.*

Q. You wrote that letter?

A. Yes, sir.

Q. Now, then, at that time—did he bring back that receipt at the same time?

A. Yes, sir.

Q. Is that the receipt?

A. Yes, sir.

Q. Is that the receipt brought back at that time by Baker?

A. Yes; that is Willits' receipt.

Q. This is dated November 5th, 1894—signed when Baker was there.

A. Yes, sir.

Q. Whose handwriting is that?

A. Howard Baker's writing.

299 Counsel for the defendant offers in evidence receipt last above mentioned, and which receipt is marked Defendants' Exhibit "U," and which receipt is in the words and figures following, to wit:

NEW BOSTON, ILLINOIS, Nov. 5, 1894.

Received of the Knapp, Stout & Co. Co. 144 cribs of lumber of the Schulenburg & Boeckler Lumber Co., Stillwater, Minn., manufacture.

368,100 lath.

942,250 shingles.

3,350 pickets.

640 flat.

242 timbers.

} Deck-loading on above 144 cribs.

1 line 600 feet  $1\frac{1}{2}$  in. } Lines holding said 144 cribs, and whatever  
1 " 400 "  $1\frac{1}{2}$  in. } there is at New Boston.

E. L. WILLITS.

300 Counsel for the complainant objected to introduction of this last paper, but the court admitted it, subject to objection.

Q. Now, I will ask you what are the width of the rafts generally on the Mississippi river—how many strings.

A. They run all widths. Lately they run eight strings wide for the purpose of having them ready to go through the drawbridges without breaking them up.

Q. I will ask you at the time the Schulenburg & Boeckler Lumber Company made an assignment whether or not it was exceptionally unexpected.

A. Yes, sir.

Q. How did they stand financially previously to the assignment?

Question objected to by counsel for the plaintiff; which objection

was sustained by the court; to which ruling of the court counsel for the defendant then and there excepted.

Counsel for defendant desires to prove that on the day Schulenberg made the assignment that the assignment that the Schulenberg & Boeckler Lumber Company to the general public were considered financially good, and it was a great surprise to the business public when they made their assignment, but the court sustained the objection to this offer on the part of the defendant; to which decision of the court counsel for the defendant then and there excepted.

— Captain McCaffrey has said that he came to the office and had a conversation with you there.

A. Yes, sir.

Q. I wish you would tell the court what he said. He said  
301 you kept him waiting for a long time. I will ask you to explain that to the court.

A. On about the 12th of November I was down in the city for my lunch and had some other business matters to attend to. I did not return to the office until four or five o'clock. When I came into the office Mr. Duffy informed me that Captain McCaffrey had been there, and that he was going to make us some trouble. I went into the rear office and was writing letters for our five-thirty mail—some business matters I had to attend to—and Mr. Duffy came in and told me Captain McCaffrey was out there.

Q. Now, go ahead and tell what took place between you and Captain McCaffrey.

A. I said to Mr. Duffy that as soon as I was through with that mail I would come out and see Captain McCaffrey, which I did. When he asked me if we had bought a raft of Schulenberg & Boeckler in New Boston bay, I told him we had, and he wanted to know if we had paid for it, and I told him we had paid for it in full. He wanted to know—he said, after I had informed him of this, that he had some claim on it, and I told him I guessed not; that it was represented to us that there was no claim on it whatever, which was the remark Mr. Boeckler made to me at the time I bought the raft. I asked Boeckler at the time if there was any claim on that raft, and he told me there was no claim whatever on that raft, and I so stated to Captain McCaffrey.

Q. What did McCaffrey say then?

A. He claimed to have some claim for running it. He said he should try to make it out of that raft; that he had a claim for running the raft; that his contract provided for the delivery to Schulenberg & Boeckler at St. Louis, and that he was going to hold his claim on the half of the raft in Boston bay. I told him I did not think he could do so.

302 Q. What else did he say after this talk about wanting to tow the raft down for you?

A. He wanted to know if we wanted the raft run for us. I told him no; we had our own arrangements for the running.

Q. Was that when he asked you about towing it down?

A. He spoke as if he would like to tow it down, and I told him I did not want him to do so; I told him we had our own arrangements for running our lumber.

Q. Are you acquainted with the Boston Bay harbor?

A. Yes, sir.

Q. Have you ever been in there with rafts?

A. Yes; I have laid them up; we have laid rafts in there; I have laid rafts in there personally myself many times.

Q. I wish you would state in that harbor—you know where the upper end and the lower end of the harbor is?

A. Yes, sir.

Q. You know from the description where this raft was?

A. I know Boston bay and Sturgeon bay—pretty nearly all of it.

Q. You have heard the description of where this raft is here?

A. Yes, sir.

Q. You know where that was from your knowledge of Boston bay?

A. Yes, sir.

Q. You may state whether or not two lines such as Schulenberg and Boeckler sent up there—whether or not these two lines are sufficient to hold this raft in that harbor.

A. It would depend on the kind of a line. They told me they were pretty good lines.

Q. I am asking you whether two lines would hold that raft in that harbor—whether, in your judgment, two lines would hold that raft in that harbor during the winter.

A. Two good lines would hold that raft in that harbor through the winter sufficiently, in my judgment.

303 Q. Now, then, is there anything else you think of that I have forgotten? If so, I wish you would tell it, Mr. Douglas.

A. I don't think of anything.

Q. Is there anything else that you think of in connection with this?

A. No, sir; I think not.

And being cross-examined by counsel for the complainant, the witness, JOHN H. DOUGLAS, testified as follows:

X Q. When Boeckler first called at your office it was on the 5th of November, you stated?

A. Yes, sir.

X Q. You went down and examined the lumber that day at the shore?

A. Yes, sir.

X Q. Then came back to your office, did you?

A. I came back to the office when I got through.

X Q. Did you come back that afternoon?

A. Yes, sir.

X Q. Was Boeckler still there when you returned?

A. Yes, sir.

X Q. When did you see him again—on that day?

A. No; the next morning.

X Q. You did not see him on that day again?

A. No, sir.

X Q. You saw him again on the morning on the 6th?

A. Yes, sir.

X Q. At that time did he have this raft figured out separate from the other half?

A. He brought their invoice and wanted a settlement, which I made.

X Q. He wanted a settlement?

304 A. Yes, sir.

X Q. Up to that time you met him that day you hadn't bought the raft and didn't know whether you would or not?

A. We had bought it.

X Q. You had bought it on the 5th?

A. Yes, sir.

X Q. Who had you bought it of?

A. Wm. L. Boeckler, secretary of the Schulenberg & Boeckler Company.

X Q. You bought it first and went and examined the quality of the lumber afterwards?

A. Yes, sir; I bought it on his representation.

X Q. You didn't communicate to Boston bay to ascertain how it was tied up there?

A. No, sir; I took his word for it.

X Q. You did not communicate with Willits about it?

A. Yes, sir.

X Q. Mr. Boeckler told you the raft was up there in Boston bay, and you bought it on that representation?

A. Yes, sir.

X Q. You bought it on his word?

A. I bought it on Mr. Boeckler's representation.

X Q. On his personal guarantee?

A. On his representation that it was there and contained that quantity of lumber. We had always been personal friends.

X Q. But you took it as he represented it?

A. Yes, sir.

X Q. Look at this and state whether that is a copy of the bill of sale filed here (showing paper).

A. Yes, sir.

X Q. There is a pencil memorandum on the margin?

A. Yes, sir.

305 X Q. Did you make that?

A. I did.

X Q. Just read it, if you please.

A. (Reads:) St. Louis, Mo. I have drawn out 20,000 feet of lumber short, which we notified W. L. Boeckler of, J. H. Douglas, treas. of Knapp, Stout & Co. Company, and also some of the cribs were broken.

X Q. That is a copy of the sale bill?

A. Yes, sir.

X Q. It was on account of this personal guarantee that you gave him that notification?

A. I gave it to him because he represented that the raft contained so much according to the bill of sale, and we found some of the cribs broken and I notified him of the shortage.

X Q. You relied upon what he told you about what was in the raft and its condition?

A. On his representation of what the raft contained and of what I knew of him, together.

X Q. It was made on that representation, and you notified him when you found there was a shortage?

A. Yes; when I found there was a shortage I told him and we notified him as to what the shortage was.

— Q. You didn't notify the assignee?

A. No, sir.

X Q. What was that shortage for—what was short?

A. The lumber was gone out of some of the cribs that were broken.

X Q. Did you see them yourself?

A. Yes, sir.

X Q. How were they broken?

— They were cribs that were loose and the lumber was wasted and gone.

306 X Q. Was the lumber measure short?

A. Yes; at St. Louis.

X Q. Who had that?

A. I think Baker had charge of it.

X Q. There is where the shortage was?

A. Yes; when we received the lumber at St. Louis.

X Q. When you measured it you discovered then the shortage?

A. Yes; in two or three broken cribs.

X Q. This letter of the 12th of November which you wrote to Willets, Mr. Douglas, was written after Captain McCaffrey had been to your office?

A. It was the same night, I think.

X Q. When McCaffrey was there he told you he had a claim on that raft for towing?

A. He claimed to have.

X Q. And he said he was going to try to hold it for towing the lumber?

A. Yes, sir.

X Q. That was on account of some claim he had on it?

A. I think, perhaps, it was.

Q. He told you he had a contract to deliver this piece in St. Louis?

A. I think he did.

Q. That he intended to tow it and *and* wanted to do it in the spring?

A. I don't know about that.

Q. He told you he had a contract to deliver that raft down there?

A. He told me something about a contract. He told me so much I cannot remember half of it.

Q. Did he tell you that he had a contract to deliver it down there and he wanted to run it down?

307 A. He wanted to run it down and I told him I had other arrangements.

Q. Didn't he tell you he had a contract to deliver that raft in St. Louis?

A. Yes, sir.

Q. Didn't he say he proposed to run that raft into St. Louis under that contract?

A. I cannot say.

Q. Didn't you tell him to keep away; that he had nothing to do with that raft?

A. Yes, sir.

X Q. You would not have told him that unless he was claiming to have a lien on it?

A. It was our property.

X Q. He told you that in response to his claim he had a right to take it to St. Louis and hold that raft, and you told him to keep away and not to have anything to do with it?

A. I cannot say as to that. I know we had considerable talk about it.

X Q. He was there some time talking to you about that and you cannot remember certainly everything that was said?

A. I remember most of it.

X Q. You cannot pretend to tell everything that was said—everything that was said?

A. No, sir; I know the most important part; I know what words were used.

X Q. You were the manager of the defendant company—of the Knapp, Stout & Co. Company?

A. Yes, sir.

X Q. Do you have charge of the defense in this suit to look after the interest of the company?

308 A. Yes, sir.

X Q. Did you see this answer after it was prepared?

A. I think I did; I suppose I did. Anything that was necessary, I suppose, I have seen and read it before I signed it.

X Q. You did see this, did you?

A. Yes, sir.

X Q. You read it before you signed it?

A. Yes, sir.

X Q. This don't seem to be signed by you. Look and see if you saw this before it was filed. (Shows.)

A. I stand by what my attorneys have done.

X Q. You cannot tell whether you saw that before or not?

A. No, sir.

X Q. But you stand by what your attorneys have done?

A. Yes, sir.

X Q. To whom did you give your instructions with reference to this matter; what one of your attorneys?

A. Wise & McNulty.

X Q. This answer reads that you made the purchase November 4th?

A. I cannot say as to that. My purchase was on the 5th of November.

X Q. What day of the week did you make the purchase?

A. I think on Monday.

X Q. Your answer states that you made it on the 4th, and you say the gentleman who drew the answer had his information wrong?

A. I suppose he had.

X Q. You don't know anything about these lines, what these lines were that Boeckler sent up; whether they were good, bad, or indifferent?

309 A. I saw them when they came down to St. Louis. They were good lines.

X Q. They were good lines?

A. Yes, sir.

X Q. Where did you see them?

A. At St. Louis, on the lumber —. I took the word of the captain of the "Saturn" that they were good lines.

X Q. Some one told you that they were the lines?

A. He said that Willet said that they were the lines that were sent down on the raft.

X Q. You don't know whether these were the lines of some other lines?

A. No, sir; not positively of my own knowledge.

X Q. In response to something that McCaffrey said to you, you told him that you were in possession of the raft and he had no right to possession or could not move it or have anything to do with it?

A. Yes, sir.

X Q. That was in response to something he said to you?

A. Yes, sir.

X Q. You sent Howard Baker to New Boston to count this raft?

A. Yes, sir.

X Q. Willets was there, then, watching the raft for you?

A. Yes, sir.

X Q. Why didn't you have him count it?

A. Why didn't we have him count it?

X Q. Yes.

X Q. Because we had a man in that kind of business and we sent him.

X Q. Willets was in that kind of business?

A. I don't know; he was watching rafts.

310 X Q. A man watching rafts should be able to tell how many feet are in it?

A. I should judge Willets was able to count the raft.

X Q. Why didn't you have him do so?

A. Because we preferred to have Howard Baker, who was regularly in that business.



X Q. Do you think you had any contract with Willets to watch lumber for you?

A. We have had Willets engaged for a number of years.

X Q. Do you say that you made your own contract with him to watch lumber for the Knapp, Stout & Co. Company?

A. Yes, sir.

X Q. When?

A. Four years ago I was there myself and contracted with him personally.

X Q. Who did you pay for watching?

A. We paid E. L. Willets—our company paid E. L. Willets.

X Q. Your company paid him?

A. Our company paid E. L. Willets.

X Q. It was paid from your office in St. Louis?

A. Yes, sir.

X Q. How did you pay him there?

A. We paid him monthly.

X Q. You paid him by the month?

A. Yes, sir.

X Q. How much per month?

A. One dollar for the days of the month. If thirty-one days, we paid him \$31; if thirty days, we paid him \$30; if twenty-eight days, we paid him \$28 00. We paid him one dollar for every day in the month.

X Q. Did you pay him by the month or by the year round, or only when you had rafts in there?

311 A. Only when we had rafts in there.

X Q. When you had no rafts in there you paid him nothing?

A. No, sir.

X Q. Has Willets ever counted rafts that have been put in there for you?

A. I am not sure that he had.

X Q. You cannot say about that?

A. No, sir.

X Q. This receipt offered here in evidence, whose handwriting is the body of that receipt, do you know?

A. That is Howard Baker's writing.

X Q. That is, the body of the receipt?

A. It was written at St. Louis, before he started. It was from the description of the invoice, but when we got up there, then we found it a trifle different in the top-loading.

X Q. Except that you are sure that receipt was written in St. Louis?

A. Yes, sir.

X Q. Before he started up there?

A. Yes; that is my recollection.

And being further examined by counsel for the defendant, the witness, JOHN H. DOUGLASS, testified as follows:

Q. What is the custom, if you know, about boats lying up outside of rafts for the winter?

A. I had been at New Boston bay several times when we laid up boats, and we laid them up on the outside of the rafts for the purpose that if the river should fall they would still be kept afloat, and also as a protection to the raft.

X Q. In what way are they put there?

A. To allow them to be kept in deep water in case the river should fall.

312 X Q. Is it customary or ordinary for persons engaged in the lumber business to put boats outside of rafts in winter quarters?

A. It is a great benefit to the boat to have them placed that way.

Q. Now, another thing. I will ask you if you ever said or made any threats of any kind to go there and take away the raft.

A. No, sir.

Q. After this suit was commenced?

A. No, sir.

Q. Now, then, I wish you would commence with the month of December, 31, '94. I see here is one check for the month of November, 3rd, 1894; the next that we have is the check dated November 3rd, 1894, for the sum of \$57.

A. Yes, sir.

Q. Payable to Ed. Willets?

A. Yes; that was his pay for two months.

Q. For what months?

A. In October we had a raft in there a few days. From September 22nd to October 21st, and from the 8th of October on through the month to the 31st of October, making 33 days in the one instance and twenty-four in the other, making a total of \$57, the amount of that check.

Q. The next one we have is what date?

A. December 31st.

Q. What was that for?

A. That was for November and December—thirty days in November and thirty-one days in December.

Q. Of 1894?

A. Yes, sir.

Q. Here is one in 1895—February 16th, 1895. What is that one for?

313 A. That was for the month of January, 1895—\$31 for thirty-one days.

Q. Here is one March 3rd, 1895. What was that one for?

A. \$28 for twenty-eight days in February.

Q. What is this next one?

A. That is April 4th, 1895—\$31 for March—thirty-one days in 1895.

Q. Now, I will ask you if Willets still watches for you and has watched for you right along after this.

A. Yes; he is still watchman for us.

Counsel for the defendant offers in evidence the checks last above mentioned, and which checks are marked Defendant's Exhibit "T" 1 to "T" 5, inclusive, and are in the words and figures following, to wit:

No. 11119.

The Knapp, Stout & Co. Company, lumbermen, St. Louis, Dec. 31st, 1894, in current funds pay to E. L. Willets or order sixty-one <sup>100</sup>/<sub>100</sub> dollars.

\$61.00#.

THE KNAPP, STOUT & CO. COMPANY,  
Per ARCH'D DOUGLASS.

To State Bank of St. Louis, St. Louis, Mo.

No. 11044.

The Knapp, Stout & Co. Company, lumbermen, St. Louis, Nov. 3d, 1894, in current funds pay to E. L. Willets or order fifty-seven dollars.

\$57.00.

THE KNAPP, STOUT & CO. COMPANY,  
Per ARCH'D DOUGLASS.

To State Bank of St. Louis, St. Louis, Mo.

No. 11159.

314 The Knapp, Stout & Co. Company, lumbermen, St. Louis, Feb'y 16, 1895, in current funds pay to E. L. Willets or order thirty-one dollars.

\$31.00.

THE KNAPP, STOUT & CO. COMPANY,  
Per ARCH'D DOUGLASS.

To State Bank of St. Louis, St. Louis, Mo.

No. 11182.

The Knapp, Stout & Co. Company, lumbermen, St. Louis, March 9th, 1895, in current funds pay to E. L. Willets, Esq., or order twenty-eight dollars.

\$28.00.

THE KNAPP, STOUT & CO. COMPANY.  
JOHN H. DOUGLASS, *Treasurer*.

To State Bank of St. Louis, St. Louis, Mo.

No. 11198.

The Knapp, Stout & Co. Company, lumberman, St. Louis, April 4th, 1895, in current funds pay to E. L. Willets or order thirty-one dollars.

\$31.00.

THE KNAPP, STOUT & CO. COMPANY,  
Per ARCH'D DOUGLASS.

To State Bank of St. Louis, St. Louis, Mo.

And being further cross-examined by counsel for the complainant, the witness, JOHN H. DOUGLAS, testified as follows:

X Q. You paid Willets just the same price whether you had one raft there or two?

A. Yes, sir.

X Q. You paid Willets a dollar a day when you had a raft in there, no matter what it was?

A. Yes, sir.

315 X Q. Did you pay anything to the Burlington Lumber Company on account of shore privileges?

A. No, sir; Willets furnished shore privileges.

HOWARD BAKER, a witness called on the part of the defendant, being first duly sworn, testified as follows:

Q. What is your name?

A. Howard Baker.

Q. Where do you live?

A. At St. Louis, Missouri.

Q. What is your business?

A. Foreman for the Knapp, Stout & Co. Company, St. Louis, Missouri.

Q. How long have you been in their employ?

A. Nine years.

Q. In your business there, are you familiar with the lumber business?

A. Yes, sir.

Q. I will ask you what experience have you had with boats rafting, if any.

A. I steamboated four years. I was foreman of their landing one year. I have been foreman of their yards five years.

Q. Do you know Boston bay?

A. Yes, sir; I am very well acquainted with Boston bay.

Q. How long have you known it?

A. Since 1886.

Q. State if you went at the request of the Knapp, Stout & Co. Company to see Willets and the raft in New Boston bay last November a year ago; and, if so, what day did you leave St. Louis, if you left there.

A. I left there on the evening of November 9th, 1894.

Q. Where did you go?

315 A. I got to New Boston bay in the morning at seven o'clock, on the morning of the 10th.

Q. What did you do?

A. I went over to Willets' house. He hadn't had breakfast yet, and I told him I had come to count the raft and get his receipt for it.

Q. What did you do then?

A. I went to the hotel and got my breakfast, and went to the raft and got a receipt, and returned on the first train that evening.

Q. You and he went over the raft and counted it?

A. Yes, sir.

Q. Did you see the lines?

A. Yes, sir.

Q. Now, then, did you see two lines there that were sent by Schulenberg & Boeckler Company and put on the raft?

A. I saw two lines that he told me had been sent there.

Q. State whether or not, in your judgment, two lines were sufficient to hold that raft in that place in New Boston bay.

A. In my judgment I think so.

Q. The receipt which is marked Defendant's Exhibit "U," is that the receipt you procured at that time?

A. Yes, sir.

Q. Did Willets sign that name to that?

A. Yes, sir.

Q. Did you see him do it?

A. Yes, sir.

Q. This receipt appears to be dated November 5th. Where did you first get that receipt? Explain when.

A. I made out that receipt myself in St. Louis.

Q. You made it out in St. Louis?

317 A. Yes, sir.

Q. You took it with you?

A. Yes, sir.

Q. After you got to Boston bay you went and counted the raft and Willets signed it?

A. Yes, sir; it took pretty nearly all day to count the raft, and I left on the evening of the 10th.

Q. While you was there on the 10th, was there anybody else there except Willets—the day that you did the counting? Who had charge of the raft? Did you find anybody else there?

A. I did not see any person there on the raft while we were there. There was some person came onto the raft from the telegraph office with a telegram; I think the operator or some one from the telegraph office.

Q. What do you mean by the operator?

A. Somebody came down to the raft with a telegram for McCaffrey, and we told him that we did not know anything about him.

Q. You saw nobody there?

A. No, sir.

Q. Did you see Henry McCaffrey there that day?

A. No, sir.

Q. Did you see any of the McCaffrey-, the old gentlemen or any of his sons?

A. No, sir.

Q. You did not see anybody?

A. I did not see anybody.

Q. Mr. Baker, what is the custom about boats being run out, outside of rafts in winter quarters?

A. Well, if you put a boat on the outside of a raft it will save

318 you expense in starting; if you lay a boat alongside the shore you have to set spuds under; it is apt to settle on the river bottom and will get aground.

Q. You generally place them on the outside of the rafts?

A. Yes; there is generally plenty of water out there, and if the river falls she is safe.

Q. Take the Boston Bay harbor, where a boat lay outside of seven or eight strings of lumber, or just where that boat was, you say the water there is a good and safe place for a boat to lay in the winter?

A. We have laid boats up there, and we considered it safe. I have been on boats that were laid up there, and we considered it a good and safe place.

And being cross-examined by counsel for the complainant, the witness, HOWARD BAKER, testified as follows:

Q. When a raft is being taken down the river, Mr. Baker, and the raft is laid up for the winter, is it customary to lay the boat up for the winter with the raft?

A. I cannot say as to that.

Q. After the raft was delivered in St. Louis, the boat was usually taken into the home port to be laid up?

A. Well, no. It is according to where your boat is or where she is working. I worked for the McDonald Brothers at La Crosse, and I laid up my boat at—

Q. You would not take your boat to New Boston bay if you had a raft there?

A. Not necessarily.

Q. Where would you tie up?

A. Generally at the home port.

X Q. That would not be in accordance with the custom, would it?

319 A. Yes; I think it would.

X Q. To take your boat and tie it, having no raft up there at all?

A. Yes, sir.

X Q. You think this was customary with men on the river?

A. Yes, sir.

X Q. Do you tie your boat in where there is no raft?

A. No, sir.

Q. That is what you have gathered from your years of boating?

A. Yes, sir.

X Q. Did you tie your boat when you were steamboating, and where there was no raft?

A. Yes, sir.

X Q. Where?

A. Yes; in Quincy bay.

Q. What boat?

A. Kit Carson.

X Q. How often?

A. Once.

X Q. How many years were you on the river ?

A. I was on the river four years rafting.

X Q. When was that that you tied your boat in Quincy bay ?

A. That was in the winter of 1890.

X Q. Was there any rafts there at all ?

A. No, sir ; it was tied to the bank.

X Q. What time did you lay up there ?

A. November 22nd, 1890.

X Q. Who did that boat belong to ?

A. She belonged to McDonald Brothers.

X Q. Where did that boat make headquarters ?

A. At La Crosse, Wisconsin, & on the Black river.

X Q. How was the ice up there that season of the year ?

320 A. I don't think that there was enough to bother the boat any.

X Q. You could not get a boat up there at that time at La Crosse ?

A. I don't think there was anything to hinder.

X Q. Did McDonald Brothers have a place of business in St. Louis ?

A. Not to my knowledge.

X Q. Were they simply boatmen, or did they own yards ?

A. I think they owned a yard at La Crosse.

X Q. They didn't own any yards down the river any place ?

A. Not to my knowledge.

X Q. Did they have any place down there ?

A. Not to my knowledge.

X Q. How did you come to leave that boat up there that year ?

A. I think they wanted to repair the boat, and they had stuff to go to Hannibal in the spring.

X Q. You had to get the boat out on the ways to repair ?

A. Yes ; during the winter.

X Q. What are the ways ?

A. They are long arms or slides that extend down into the river.

X Q. And go up on the bank to run a boat on to the bank ?

A. Yes, sir.

X Q. You had something to tow to Hannibal ?

A. Yes, sir.

X Q. Where was the tow ?

A. It was lying in Quincy bay.

X Q. What was it ?

A. Logs.

X Q. It was a log raft ?

A. Yes, sir.

321 X Q. You did have a raft in there, then ?

A. We had a raft in Quincy bay. We didn't tie the boat alongside of it.

X Q. Because you wanted to take it out to repair it ?

A. Yes, sir.

X Q. How do you fix the date when you was at New Boston ?

A. I got back on Sunday morning. I know I put up a stove on Sunday morning for my wife.

X Q. How do you know that that morning was the 11th ?

A. It was Sunday morning that I came from New Boston.

X Q. How do you fix it that it was the 11th of November, that you put up the stove on the 11th of November?

A. The same as I would fix it if I put it up on the 18th.

X Q. What day of the month did you put up a stove in 1893?

A. I think on the 9th of November.

X Q. What time did you put up a stove in 1892?

A. I cannot say, as it is too far back.

X Q. You cannot remember when you put up a stove in 1892?

A. No, sir.

X Q. But you can remember that you put up a stove the 9th of November, 1893?

A. Yes, sir.

X Q. How do you remember that?

A. It was two days later the next year; it was on account of the stove.

X Q. Did the stoves fix it upon the same day?

A. It happened two days earlier.

X Q. When he came there, the operator on that raft, he had a message for Henry McCaffrey, in care of Willets?

A. I think he had a message, he said, for Henry McCaffrey.

X Q. What did he do with the message?

A. I cannot say.

322 X Q. Did he leave it with Willets?

A. I don't remember.

X Q. You don't remember about that?

A. No, sir.

X Q. What time of the day did you commence counting that raft?

A. When? About eight in the morning.

X Q. What time did you conclude the counting?

A. About four o'clock in the afternoon.

X Q. Where was this receipt signed?

A. In Willets' house.

X Q. That was after you concluded the counting in the afternoon?

A. Yes, sir.

X Q. About what time was this receipt signed?

A. Between four and six o'clock.

X Q. You can't fix it any more definite than that?

A. No, sir.

X Q. Now, when you and Willets were on the raft—now, you and Willets were on the raft when you were counting it?

A. Yes, sir.

X Q. That was all that was done there?

A. Yes, sir.

X Q. You and he counted the stuff in the raft?

A. Yes, sir.

X Q. Where were the lines that Willets told you belonged to Schulenburg & Boeckler?

A. One was on the stern and one was on the bow.



X Q. One was on the stern and one was on the bow?

A. Yes, sir.

X Q. How many bow lines were on the raft?

A. I did not see but the one.

323 And being further examined by counsel for the defendant, the witness BAKER testified as follows:

Q. Tell how these lines were fastened to that raft.

A. The bow line was fastened as about three or four strings from the shore, from the right-hand side north, and ran little diagonal down the river to the tree. The stern line was run to the check-works of the raft a little diagonal up the river to a tree.

X Q. Taking these two lines which were shown to you as the Schulenberg and Boeckler lines, how were they fastened to that raft?

A. Just as I have said.

X Q. Those are the lines you saw?

A. Yes, sir.

And being cross-examined by counsel for the complainant, the witness, HOWARD BAKER, testified as follows:

X Q. You saw other lines there, Mr. Baker?

A. Which way do you mean?

X Q. You saw the other lines there besides these two lines on this raft, attached to the raft?

A. No, sir.

X Q. You did not see them?

A. No, sir.

X Q. Did Willets tell you about other lines?

A. No, sir.

X Q. You did not see them?

A. No, sir.

X Q. Didn't Willets tell you about the other lines?

A. No, sir.

X Q. All the lines you saw were the two?

324 A. Yes, sir.

X Q. One was fastened how—one to the bow and one to the stern?

A. Yes, sir.

X Q. The one from the bow must have been two or three cribs back from the bow. How far from the bow there are the check-works, three and one-half cribs back?

A. Yes; one of them.

X Q. There were only two lines that you saw on the raft when you were there?

A. Yes; one of them was at the bow and one of them at the back end.

X Q. You just said a minute ago that the first one was fastened one crib or so and the other was fastened on the check-works on the bow?

A. One was on the check-works.

X Q. And one of them went from the check-works to the bow?

A. One of them was fastened three or four cribs from the bow.

X Q. Was that on the bow?

A. The bow was the end down river.

X Q. There was one fastened to the check-works?

A. Yes, sir.

X Q. And one three or four cribs from the front end of the bow?

A. Yes, sir.

X Q. How far was the check-works from the bow?

A. The raft was eighteen long and three and one-half wide—fourteen and one-half cribs.

X Q. Do you call that line on the check-works the bow line?

A. No, sir.

X Q. Where was the bow line of that boat?

A. The line I call the bow line is the one fastened three  
325 or four cribs back from the bow.

X Q. That is the one you call the bow line?

A. Yes, sir.

X Q. And there was only two lines on that raft?

A. Yes, sir.

X Q. Your eyes are good?

A. Yes, sir.

X Q. You was all over that raft?

A. Yes, sir.

X Q. And along both sides of it?

A. Yes, sir.

X Q. You saw lines attached to the boat and to the raft, didn't  
you?

A. Yes, sir.

X Q. These lines attached to the check-works were also attached  
to the boat?

A. No, sir.

X Q. They were not?

A. No, sir.

X Q. The line that was attached from the boat to the shore, that  
was also attached to the raft?

A. I did not see it that way.

X Q. Do you know whether it was or not?

A. I did not see it that way.

X Q. You cannot swear whether it was or not?

A. I cannot say; I did not see it that way.

X Q. You would not swear it was not?

A. I did not see it.

JOSEPH DUFFY, a witness called on the part of the defendant,  
testified as follows:

Q. What is your business?

326 A. I am with the Knapp, Stout & Co. Company, in the  
lumber business.

Q. I wish you would state whether you was in the office when Captain McCaffrey went in to see Mr. Douglass.

A. Yes, sir.

Q. State whether Douglas was there when he first called.

A. No, sir.

Q. Where was he?

A. Down in the city.

Q. Did McCaffrey remain until Douglas came back?

A. No, sir.

Q. What did he do?

A. He talked to me awhile; he said something about the raft. I said I did not know anything about that raft; that was the river business, and he would have to see Douglas about that.

Q. Did he go out and then go away?

A. He asked me what time Douglas would be back, and I told him he got back from his lunch between four and five o'clock; it might be five o'clock before he would be back, and he said he would come again.

Q. Did he come back?

A. Yes, sir.

Q. When he came back was Douglas there—the second time?

A. When he came back the second time Douglas was there.

Q. Douglas was busy at that time?

A. Yes; he was busy.

Q. As soon as he got through he came out to see Mr. McCaffrey?

A. I went in and saw Mr. Douglas and told him McCaffrey was there. I spoke to Mr. Douglas when he came back and told Captain McCaffrey had been there to see him about the raft in New Boston bay, and when he came back I told him I had spoken  
327 to Douglas, and as soon as he got through with his mail he would come out.

Q. Did he come out?

A. Yes, sir.

Q. Was you present at the conversation?

A. Yes, sir.

Q. Tell the conversation.

A. Well, there was a good deal of conversation. So far as the raft was concerned, McCaffrey said he had a claim against the raft for running it, and he wanted to know, as I recollect it, whether we wanted him to run it down to St. Louis, and Douglas said, No; we have our own arrangements for running.

Q. When he said he had a claim on the raft what did Mr. Douglas say?

A. Mr. Douglas said he guessed not; that he had bought that raft, with everything on it.

Q. After he had told him that he had bought the raft, with everything on it, what did McCaffrey say about towing it down for them next spring?

A. He wanted to know if the Knapp, Stout & Co. Company wanted it towed down to St. Louis.

Q. What did Mr. Douglas say?

A. He said, No ; that they had arrangements for doing their own towing.

After being cross-examined by counsel for the complainant, the witness DUFFY testified as follows :

X Q. When Mr. Douglas told McCaffrey they had bought the raft, with everything on it, McCaffrey told him he had some lines on it ?

A. Yes ; McCaffrey said, You don't get all the lines, or something like that ; these are my lines on that raft.

328 X Q. What did Douglas say about that ?

A. He said he had bought the raft with all the lines, and McCaffrey said, I have my lines running across that raft, and that he had not bought the lines.

X Q. Douglas told him his lines were not on the raft ?

A. Yes ; he told him that they were not holding the raft ; that the lines were their lines ; that our lines were holding the raft. That is what Douglas told him.

X Q. McCaffrey told him that he had a contract to take that raft to St. Louis, didn't he ?

A. I cannot recollect ; there was so much conversation and it got pretty warm, and I cannot repeat it.

X Q. It was a little hot around there, you say ?

A. Yes, sir.

X Q. He said, in substance, that he had a contract to take that raft to St. Louis ?

A. My recollection is he said something about that contract. We knew he had a contract with Schulenberg and Boeckler people to do their towing.

X Q. And he wanted to tow that raft ?

A. He said something of that kind.

X Q. Did he say that ?

A. My recollection is that he asked Douglas if he didn't want him to tow that raft to St. Louis, and Douglas said no.

X Q. He said he had a contract to tow that raft to St. Louis and was ready to do it, didn't he ?

A. I am not positive that those were his words.

X Q. That was the substance of it, was it not ?

A. He asked him if he wanted him to tow that raft to St. Louis.

X Q. In accordance with his contract ?

329 A. I don't know whether the contract was mentioned of not. Of course, we knew that he had a contract with the Schulenberg & Boeckler people.

X Q. You knew he had a contract to do the towing of the lumber to St. Louis ?

A. We knew that he was doing their running ; we did not know the terms of the contract.

X Q. Douglas told him to keep away and leave that raft alone ?

A. Yes, sir ; something of that kind was said.

X Q. In what capacity are you employed there ?

A. As cashier and salesman.

E. L. WILLETS, a witness called on the part of the defendant, being first duly sworn, testified as follows:

Q. What is your name?

A. E. L. Willets.

Q. Where do you reside?

A. New Boston, Illinois.

Q. How old are you?

A. Fifty-two.

Q. What is your business?

A. Taking charge of rafts in New Boston bay.

Q. For whom do you watch rafts?

A. For the Burlington Lumber Company and the Knapp, Stout & Co. Company and other companies.

Q. Were you present when Robert Dodds brought the raft in there last October, 1894?

A. Yes, sir.

Q. When was it?

A. October 26th, in the afternoon.

Q. When the raft came in there did you go down to it?

330 A. I went out to it in a skiff.

Q. You was down there? Explain in your own way.

A. When I got out to where they were they had a few cribs stuck on a shallow bar. They got them off and put the raft in the bay.

Q. What time of day did you go on the raft before it was landed?

A. It was in the afternoon I went on the boat and had supper on the boat before they went into the bay.

Q. Then they put it in the bay; they put it where you directed them?

A. Where I directed them to.

Q. How about the lines; who directed the lines? Tell how the lines were put out, whether or not you said anything about the putting out of the lines, and state what was said.

A. I asked the captain if this raft would stay there through the winter, and he said he could not tell until he took the other piece to St. Louis; that he could not tell whether it — lay there during the winter or not.

Q. Well, how about the lines?

A. He had the raft fastened up with lines from the boat.

Q. Who places these lines; who had the directing of the placing of these lines?

A. I had something to do with it; I told them where to place the lines. The boat's crew run the lines out. There was a number of trees on the shore, and I told them where to place the line.

Q. You told them where to place the lines to make the raft safe?

A. Yes, sir.

X Q. Did they state or did you know to whom the raft belonged at that time when you saw it there?

331 A. I saw it was Schulenberg & Boeckler Lumber Company's boat, and I took it for granted it was theirs.

X Q. Did they say it was theirs when they towed the raft in there or anything of the kind; was there any dispute about its being Schulenberg's and Boeckler's raft?

A. No, sir; I think not.

X Q. Now, then, when the boat came in there how long did the boat remain when they came in with the whole raft?

A. With the raft in question?

Q. Yes, sir.

A. Not more than twenty minutes, I would not think; that is my recollection.

Q. Where was the other half of the raft left; was it brought inside or left on the outside?

A. I never saw but one-half of the raft; that was put in the bay.

Q. You did not see the other half, only that half of the raft that was brought in?

A. Yes, sir.

Q. How long did they remain there?

A. They tied the raft up and then left immediately.

Q. You say they were there about twenty minutes?

A. Yes, sir.

Q. I wish you would state whether anything was done in the way of counting; anything at that time.

A. I think not.

Q. I wish you would state to the court in receiving that raft for whom you were acting in receiving that raft.

332 Question objected to by counsel for the complainant; which objection was sustained by the court; to which ruling of the court counsel for defendant then and there excepted.

Q. Who employed you to take charge of that raft?

Question objected to by counsel for the complainant; which objection was overruled by the court; to which ruling of the court counsel for the complainant then and there excepted.

A. I understood that I was employed by the Schulenberg & Boeckler Lumber Company.

Q. Now, then, when that raft landed, as soon as that raft landed, did you notify Schulenberg & Boeckler Lumber Company? Did you send them a postal card?

A. Yes, sir; I did.

Q. Is this the card?

A. Yes, sir; yes; that is my handwriting.

Q. This is the postal card, this one marked Exhibit "F"?

A. Yes, sir.

Q. I wish you would state what your business relations had been with Schulenberg & Boeckler, in so far as watching their rafts was concerned that came into that harbor, the New Boston harbor.

Question objected to by counsel for the complainant except as it relates to this raft; which objection was overruled by the court and the question allowed subject to objection; to which decision of the court counsel for the complainant then and there excepted.

A. I commenced to watch rafts in New Boston bay in 333 1881 for the Burlington Lumber Company. I was their watchman and I did business for them. I watched for them in a general way all rafts that came in there. I was their agent to look after the rafts that came in there.

Question by Scott: You was their agent in a general way?

A. The Burlington Lumber Company employed me to take charge of all the rafts put there. I was in the employ of that firm as watchman. My recollection is that Schulenberg & Boeckler had some property there at that time and I took charge of the same, as well as the rafts of other company's, just the same as I did for the Burlington Company.

Q. Have you continued to take charge of the Schulenberg & Boeckler Lumber Company's rafts right along from that time down?

A. Yes, sir.

Q. Including this raft?

A. Including the raft in question.

Q. Now, then, this postal card is dated—Exhibit "F" is dated October 27th, 1894. I will ask you if you received in reply a letter from the Schulenberg & Boeckler Company to that postal card.

A. Yes; I received such a letter.

Q. The letter is dated October 30th, 1894, and is marked "Exhibit G," defendant's testimony. Is that the letter you received?

A. Yes, sir.

Counsel for the defendant offers in evidence the postal card above referred to from Willets to the Schulenberg & Boeckler Lumber

334 Company, as also the letter of Schulenberg & Boeckler in reply; which postal card and letter are marked respectively Exhibit "F" & "G," and are in the words and figures following, to wit:

(Postal.)

NEW BOSTON, ILL., 10, 27, '94.

GENTS: The Str. Rob't Dodds left eight strings of lumber, twenty-one cribs long, last night, and departed this a. m. for St. Louis with eight strings. Will this Rob't stay over winter? If so, please send two good lines up by the Rob't Dodds.

Yours respt.,

E. L. WILLETS.

(Letter.)

Schulenburg & Boeckler Co., St. Louis.

ST. LOUIS, Mo., Oct. 30th, 1894.

E. L. Willets, Esq., New Boston, Ill.

DEAR SIR: Replying to your postal of the 27th inst., we desire to state that we will probably lay the raft in Boston bay over winter, in which event we will send you the lines as requested by steamer

Rob't Dodds. In the meantime, do everything in your power to assure the safety of same while in your possession.

Very truly yours,

SCHULENBURG & BOECKELER L'B'R CO.,  
By DAN'L F. BEHRENS.

335 Q. Now, I will ask you did the lines come as requested?

A. Yes, sir.

Q. You requested them to send certain lines; did they send the lines?

A. Yes, sir.

Q. What did they send the lines by?

A. The steamer Robert Dodds.

Q. As the letter states, they sent the lines by the steamer Dodds?

A. Yes, sir.

Q. Did the lines come on the steamer Dodds?

A. Yes, sir.

Q. What did you do with the lines when they came?

A. We put them up, or the crew did, under my instructions.

Q. I will ask you to state if these lines were sufficient to hold this raft safely in New Boston bay.

A. In an ordinary stage of water; I would not consider them safe in high water.

Q. In the winter?

A. No; not in winter; we have a heavy weight of ice on shore in winter and I would hardly think it safe.

Q. Was there at the time the raft was received?

A. Yes; the water was low and there was no ice in the bay.

Q. Then, whatever might be needed should be put out as you wanted them?

A. If you had a line there you could use it.

Q. If you had a line you could do that, in your judgment?

A. Yes, sir.

Q. When the boat came back what did the boat do?

A. They brought the lines.

Q. They brought the lines?

336 A. Yes; they came in there on the morning of the 4th of November, 1894; about eight o'clock, probably. I went down and saw the captain, and he said, Have you any orders about laying the boat up? and I said, No; and he said, Well, I guess we will have to leave the boat here; we will leave the boat with you, or could you take care of it? I said, Yes, and then we talked a while about the price about watching the boat, and we did not agree all together.

Q. What was done then when they concluded to lay up the boat for the winter and leave it in your charge? What was done about taking any strings of the raft out—any cribs?

A. We got to that further on after the agreement was made.

Q. What did you do?

A. Young McCaffrey, the clerk, wanted to count the rafts, and we went ahead and counted the rafts, and the captain and I had a dis.



cussion about the rafts and boat, and we did not agree, and we went ahead and counted the rafts, and afterward the captain and I agreed upon a price. He did not like the price that we had agreed upon.

Q. What was the price?

A. \$60 until spring.

Q. What was that for?

A. For taking care of the boat, pumping her out, sweeping off the snow, and watching her.

Q. For watching her and taking care of the boat you was to have \$60 for the season?

A. Yes, sir.

Q. What was done after that?

A. Well, after a bit we proceeded to take out five cribs of the raft to put the boat in on the outside of the raft.

337 Q. Was it four cribs or five cribs?

A. It was five cribs.

Q. Are you positive of that?

A. Yes, sir.

Q. After the boat was left did he give you the key to the boat?

A. Yes, sir; the keys to the cabin. The under part of the boat was not locked. He told me he would get a lock put on there right away.

Q. What was the next thing you did when you commenced to watch that raft? I will ask you if you received a letter from Schulenburg & Boeckeler.

A. Yes, sir.

Q. Is that the letter?

A. Yes, sir.

Q. This letter of November 5th, 1894, you received from Schulenburg and Boeckeler?

A. Yes, sir.

Counsel for the defendant offered the letter in evidence of November 11th, 1894, and the same is marked Defendant's "Exhibit L," and is in the words and figures following, to wit:

SCHULENBURG & BOECKELER LUMBER Co.

ST. LOUIS, *November 5th, 1894.*

Mr. W. E. Willets, New Boston, Ills.

338 DEAR SIR: We have 144 cribs of lumber in Boston bay, numbered from 1807 to 1950, inclusive. This raft, with all top-loading thereon, we have sold to the Knapp, Stout & Co. Co., along with all the lines that we sent you to tie up the raft. You will please turn the raft complete, with all the lines, over to said Knapp, Stout & Co. Co. They will settle with you as to the storage charges.

Very truly,

SCHULENBURG & BOECKELER

L'B'R CO.,

By WM. L. BOECKELER, *Sec'y.*

Q. Now, I will ask you what next you received, if you recollect that postal card.

A. Yes, sir; I received that.

Q. This postal card of the Knapp, Stout & Co. Company was received by you, dated the 6th day of November?

A. Yes, sir.

Counsel for the defendant offered in evidence the postal card above referred to, and the same is marked "Defendant's Exhibit Y," and is in the words and figures following, to wit:

THE KNAPP, STOUT & CO. COMPANY,  
ST. LOUIS, MO., Nov. 6th, 1894.

DEAR SIR: We have bought and paid Schulenberg & Boeckeler Lumber Company for raft lumber and its top-loading they claim to have in your charge in New Boston bay, and have their order to us on you for delivery of said raft, etc. (and the ropes that tie it), to us; therefore you will please accept this notice and take charge of said raft for us from this date.

339 Yours truly, THE KNAPP, STOUT & CO.  
COMPANY,  
Per JOHN H. DOUGLAS, *Treas.*

Q. I will ask you if you received a telegram from Schulenberg & Boeckeler Lumber Company about the same time.

A. Yes, sir.

Q. Is this the telegram that you received at that time?

A. Yes, sir.

Q. This telegram dated November 9th was received by you on that date.

A. That is my recollection.

Counsel for the defendant offered in evidence the telegram last above referred to, and the same is marked Defendant's Exhibit "W," and is in the words and figures following, to wit:

The Western Union Telegraph Company.

Dated St. Louis, Mo.

To E. L. Willets, New Boston, Ills.:

We sold our entire raft in Boston bay, with top-loading complete and all lines, to Knapp, Stout L'b'r Co. Co. on November fifth. They should have possession on and after that day.

SCHULENBERG & BOECKELER L'B'R CO.,  
By WM. BOECKELER, *Sec.*

Q. Now, I will ask you what was the next thing that occurred.

A. I will ask you whether or not Mr. Baker came there after that.

340 A. He came there one Saturday morning. I am not sure about the date; I think it was about the 9th of November.

Q. What did you and he do?

A. We went down and counted that raft.

Q. When you counted that raft how long did it take you to count it?

A. It took us until nearly four o'clock in the afternoon, I should judge.

Q. After you counted it did you agree on the count?

A. Yes, sir.

Q. What did you give Captain Baker when he left?

A. I gave him a receipt.

Q. Is that the receipt that you gave him at that time?

A. Well, I don't remember that; I don't remember this last being there.

Q. All besides that was on there?

A. That is my recollection.

Q. Where was this signed, Mr. Willets?

A. I think it was signed at my house.

Q. On what day?

A. On the evening of the 9th.

Q. That was dated and all done when it was handed to you?

A. It was all filled out.

Q. It was all filled out, everything?

A. Yes, sir.

Q. Now, then, I will ask you what date did you say it was.

A. It was the 9th.

Q. It was on Saturday?

A. I think it was.

Q. Do you remember whether it was on the 9th or the 10th?

A. I think it was on the 9th.

Q. It was when Captain Baker was there—called there?

341 A. Yes, sir.

Q. Now, then, I will ask you if you received any communication from Knapp, Stout & Co. Company—if you received a letter dated November 12th, 1894.

A. Yes, sir; I received that letter.

Counsel for the defendant offered in evidence letter above referred to, which letter is marked Defendant's Exhibit "V," and which letter is in the words and figures following, to wit:

ST. LOUIS, MO.

E. L. Willets, Esq., New Boston, Ills.

DEAR SIR: Mr. Baker returned on Saturday, and this day reported you and he counted the raft we bought of Schulenburg and Boeckeler Lumber Co. on the 5th inst., which we paid for in full; also for the ropes that secure it to the New Boston shore land; also produced your receipts to us for said raft, its top-loading, and the ropes that fasten it to the shore land; says he handed you our letter and d'fts which we sent to settle your acc't of watching, but did not bring a receipt for same, nor does today's mail bring a receipt. Kindly mail receipt to us. Four days after we bought raft and ropes from and paid S. & B. Lumber Co. for them they made an assignment, to the astonishment of ourselves and others. Capt. J. McCaffrey has been

here claiming several things and went away threatening to make us trouble and expense.

Yours truly,

THE KNAPP, STOUT & CO. COMPANY.  
JOHN H. DOUGLAS, *Treas.*

342 Therefore we request you to safely preserve S. & B. Lumber Co.'s letters of the 5th inst. authorizing you to turn raft and ropes (that secure it to the shore land) over to us, also their telegram of the 9th inst. to you that Mr. Baker says you said you had rec'd, as it is possible that these papers and your evidence may hereafter be required. Please remember all you know as having occurred, also what McCaffrey may say, and talk as little as possible about the matter. Much obliging,

Yours truly,

JOHN H. DOUGLAS.

Q. Now, I will ask you if Knapp, Stout & Co. Company paid you and how they paid you for watching that raft.

A. They paid me by the day.

Q. At what rate?

A. One dollar a day.

Q. How often did they pay you?

A. Usually at the end of each month. Whenever I made demand.

Q. Whenever you made demand what would they send you?

A. A check or draft.

Q. Is that one of the checks?

A. Yes, sir.

Q. I will ask you to look at that check and see if you received that and whether you have endorsed that and got the money on it.

A. Yes; I received that check and got my money on it.

Q. Have they paid you since they had any rafts in there? The last of this was April 4th, 1895, watching for the month of March.

A. Yes, sir; they have paid me up to the 20th of the present month.

Q. How about when you would write to them? How  
343 about postal cards; would you furnish them or would they furnish the postal cards, or how was that?

A. They furnished me the postal cards for some time with their address on them so I could send them, and sometimes they furnished me envelopes.

Q. Other times they furnished you envelopes?

A. Yes, sir.

Q. How was it about the Schulenberg & Boeckeler Lumber Co.?

A. They furnished me postal cards with their address on them.

Q. Now, I will ask you if you are acquainted with Mr. Woods, who has been on the stand.

A. Yes, sir.

Q. Did he come down there?

A. He did.

Q. What time?

A. Well, it was Sunday morning that I was hired. They had a boat.

Q. He came on the 11th?

A. Yes, sir.

Q. That is the night that Captain Baker had gone away?

A. Yes, sir.

Q. He came there?

A. Yes, sir.

Q. You think now it is the 11th when he came there?

A. Yes; Sunday being the 11th, that would be the 10th that Baker was there.

Q. If Woods came there to the raft on the 11th, Baker was there on the 10th?

A. Yes; Woods came there Sunday morning.

Q. On the 11th of November?

A. Yes, sir.

344 Q. What did you want to do when he came there?

A. I was standing on the boat. He came out and we talked awhile and he said, I have been hired to watch this boat and would like to have the keys. Well, I told him I had no knowledge of that. I told him I did not dispute that he had been hired, so far as that was concerned; that his time should go on, and I would write to the company for instructions. I said I would write to Davenport to Captain McCaffrey, and I wrote to him and got a reply by mail, and in their letter they said that they had hired Woods.

Q. Now, I will ask you if you had watched that raft from the time it came in there and took charge of it right along up to this time.

A. Yes, sir.

Q. Who had charge and control of that raft at that time?

A. Who had charge of it?

A. Yes, sir.

A. I did.

Q. Well, after you received the postal card from the Knapp, Stout & Co. Company, what did you do?

A. No answer given.

Q. I will ask you if at the time you received that letter Knapp, Stout & Co. Company had any other raft in there.

A. Yes, sir.

Q. Who was tending and watching that raft for them?

A. I was.

Q. What was your agreement with them as to watching rafts, as to whether there was two or three or more rafts in there, as far as the compensation was concerned?

A. I was to watch them at the same price, whether there was one or more rafts.

345 Q. Then after you received the postal you watched the raft or rafts for them?

A. Yes, sir.

Q. Did you send in your bill and get your pay for it?

A. Yes, sir.

Q. After that did that raft remain there?

A. Yes, sir.

Q. Now, then, after this man Woods came down on Sunday—in the first place, I will ask you if you ever presented a bill of any kind or any claim to McCaffrey that you was watching that raft for him.

A. No, sir.

Q. What was you employed by the captain of the boat to take care of and watch for him?

A. The steamer Robert Dodds.

Q. You was never employed to watch the raft?

A. No, sir; not as I understand by Captain McCaffrey.

Q. When Woods came down there that day you told him you had been employed, did you, and wrote Captain McCaffrey a letter?

A. Yes, sir.

Q. Is that the letter?

A. Yes; I wrote that letter.

Counsel for the defendant offered in evidence letter above referred to, and the same is marked Defendant's Exhibit "S" and is in the words and figures following, to wit:

346

## DEFENDANT'- EXHIBIT "S."

NEW BOSTON, ILL., Nov. 11th, '94.

John McCaffrey, Davenport.

SIR: I made a verbal contract with Geo. Trombley to watch the Str. Rob't Dodds this winter for sixty dollars, \$60.00. I have been pumping some every day, as she is leaking some. He said that you did not want any man on the boat at night and would not allow any fire on the boat. I told him I would attend to keeping the snow swept off and watch her for \$60.00. Capt. Trombley said all right. I was handed a message yesterday for Henry McCaffrey in my care. I have the message yet. This forenoon a man came to me & said that he would watch the Dodds from now on, as there was a man here yesterday & hired him and would pay \$1.00 per day, & the watchman was to sleep on the boat and have a fire in the cook-stove. Now why did not Mr. McCaffrey come down to the boat and see me and let me know that you want a man to stay on the boat at night as well as daytime. I have had some experience in looking after boats in the winter. This man that says he is to watch for \$1.00 per day never took care of a boat; never did anything but fish for a living. Are you dissatisfied with me or my work or my price? I can do the night work & the day work as cheap as anybody. I shall hold the keys and the boat until further orders.

Please let me hear from you soon.

Frat'ly yours,

E. L. WILLITS.

347

Q. That is what you wrote to him about the boat?

A. Yes, sir.

Q. Did you get an answer to that ?

A. Yes, sir.

Q. Is that the letter you received from Captain McCaffrey ?

A. Yes, sir.

Q. In reply to the one you wrote to him ?

A. Yes, sir.

Counsel for the defendant offered in evidence letter from Captain McCaffrey to Willets, and which letter is marked Defendant's Exhibit "R" and is in the words and figures following, to wit :

DEFENDANT'S EXHIBIT "R."

EXHIBIT.

DAVENPORT, IA., Nov. 12, '94.

E. L. Willits, New Boston, Ill.

DEAR SIR : Your letter reached me today in regard to watching the Dodds & raft. Business complications have arisen that has made it necessary for me to put in a watchman of my own, so I hired Mr. Woods. We are not dissatisfied with your watching nor do we intend to take the watching of the boat away from you. How long this will last cannot say, but it will not be for a great while. You will please comply with our directions until we advise you otherwise.

Yours very truly,

J. MCCAFFREY.

H.

348 HENRY MCCAFFREY, a witness called by the defendant, testified as follows :

Q. Did you write that letter ?

A. Yes, sir.

Q. Did you write it at your father's request ?

A. Yes, sir.

And being cross-examined by counsel for the complainant, the witness MCCAFFREY testified as follows :

X Q. How came you to write that letter, Mr. McCaffrey ?

A. There were several other rafts in Boston bay that Willits was watching, and we wanted a separate watchman of our own besides Willits. We wanted some one to watch the raft and boat all the time.

And being further examined by counsel for the defendant, the witness MCCAFFREY testified as follows :

X Q. Didn't your father telegraph you from St. Louis to write that letter ?

A. No, sir ; he did not.

Q. Where did you get your information from ?

A. I got my instructions at home.

Q. Was he at home on the evening of the 12th of November?

A. I think he was. He dictated the letter to me.

Q. Was he not in St. Louis on the 12th?

A. No, sir; he dictated the letter to — and I signed this.

Q. Didn't you say a telegram from St. Louis caused you to write that letter?

349 A. No, sir; I did not.

Q. What is your recollection of the matter?

A. My recollection of the matter is that I wrote it at his dictation.

Q. Personal letter, telegram, or how?

A. Usually personally.

Q. What was it in this case?

A. If he was not there, I wrote the letter myself, as near as I can recollect.

The further taking of testimony of Mr. WILLITS on the part of the defendant resumed:

Q. I will ask you who continued watching this raft and how long you continued to watch that raft.

A. Until it was taken away from the bay, in the spring.

Q. About the 16th of April?

A. I believe so.

Q. Was there anybody else watching that raft at any time during this time you was watching it?

A. Woods was there occasionally.

Q. Woods? Did he sleep on board the boat?

A. I think he did.

Q. How long did he sleep there; do you know?

A. I do not.

Q. Did you finally give him the key?

A. Yes, sir.

Q. I will ask you if you ever said to Woods that you was watching the raft for McCaffrey.

A. No, sir.

Q. Did you tell anybody else besides Woods that you was watching that raft for McCaffrey?

350 Question objected to by counsel for the complainant; which objection was overruled by the court; to which ruling of the court counsel for the complainant then and there excepted.

A. I don't remember of ever telling anybody.

Q. I desire to ask you a single question: I will ask you to state if McCaffrey or any of his sons did any repairing on that raft after it was landed there or since.

A. Not that I was aware of at the time or, as I am aware of, since.

Q. I will ask you if you did some yourself.

A. I did some little work on the raft.

Q. What did you do?

A. I put on some cross-couplings.

Q. What do you mean by cross-couplings?



A. That is coupling that holds the strings together.

Q. I will ask you whether McCaffrey had any raft there during 1893 for the Schulenberg & Boeckeler Company.

A. I think he had one raft.

Q. Can you tell the date?

A. Yes, sir.

Q. What is the book you hold in your hand?

A. It is a book that I enter in the receipts of the rafts that are delivered there.

Q. Did you enter the dates of the receipts of the rafts that you received?

A. Yes, sir.

Q. Did you enter then at the time you received them?

A. Yes, sir; from the time I received them.

Q. Do you show when they go out?

351 A. Yes, sir.

Q. And when they come in?

A. Yes, sir.

Q. Do you enter them at the time that they go out?

A. Yes, sir.

Q. You may tell what entries you have there and what your memory is about it.

A. I have an entry here, May 4th, 1893, received from the steamer Robert Dodds for the Schulenberg & Boeckeler Lumber Company eight strings of lumber.

Q. Do you remember about receiving that independent of your record?

A. I don't know as I do.

Q. Did you enter it at the time you received it?

A. Yes, sir.

Q. Now, then, how long did that remain?

A. They remained until May 11th, the same year.

Q. Who took it out then?

A. The steamer Charlotte Boeckeler.

Q. The same one that left it there?

A. No, sir.

Q. You say Robert Dodds left it there?

A. Yes, sir.

Q. Did McCaffrey pay you for keeping that raft?

A. No, sir.

Q. Now, I will ask you if you made the entry at the time you received the other raft.

A. Yes, sir; eight strings of lumber.

Q. You made an entry of that?

A. Yes, sir.

352 Q. Then half of the raft number 10 was 8 strings?

A. I don't know the particular number.

Q. There was eight strings of lumber on that raft?

A. Yes, sir.

Q. There was no controversy there; now, it was taken away from there last spring?

A. Yes, sir.

Q. You may turn to your entry, if you have made one.

A. October 26th, 1894.

Q. What is your entry?

A. October 26th, 1894, received of the steamer Robert Dodds for the Schulenberg & Boeckeler Lumber Company eight strings of lumber, 144 cribs.

353

COMP. "Q."

Accounts past due subject to draft without notice.

Folio 92.

Statement.

ST. LOUIS, MO., Nov. 16, 1893.

M— Capt. John McCaffrey, Le Claire, Ia., to Schulenberg & Boeckeler Lumber Co., office cor. St. Louis Ave. & Hall St., Dr.

Charges on remittances must in all cases be prepaid.

If incorrect, please notify us at once.

1893.		CR.	
Mar. 16.	By credits, as per Exhibit I.....		\$22,548 03
1893.		DR.	
Ap'l 17.	To Crown Tow Coal Co., help landing raft.....	5 25	
" "	" " cash paid John Hartman.....	300	
5.	" " " Rob't Dodds.....	150	
17.	" " " .....	649 27	
			1,099 27
18.	" " Crown Tow Coal Co., pulling off raft at mill..	5	
May 9.	" " 5 cs. dft.....	1,000	
" "	" " cash, Rob't Dodds.....	30	
16.	" " .....	1,142 88	
			2,177 88
June 6.	" " 5 cs. dft.....	1,900	1,900
1.	" " cash.....	500	500
10.	" " " Rob't Dodds .....	25	
19.	" " .....	400	
			425
28.	" " " Rob't Dodds .....	50	
24.	" " 5 cs. dft.....	1,000	
			1,050
July 18.	" " .....	700	700
10.	" " cash.....	500	500
354			
Aug. 5.	" " shortage, raft IV, 3,140 ft., at 15. ....	47 10	
17.	" " 5 de. dft. (dated June 14) .....	1,000	1,000
29.	" " shortage, raft V, 6,012 ft. lost, 2 broken, at 15.	90 18	
1.	" " telegram.....	25	
4.	" " cash, R. U. Twombly .....	20	
" "	" " .....	1,000	
" "	" " per Gleason.....	30	
26.	" " .....	500	500
31.	" " " Crown Coal Tow Co.....	292 10	292
Sep. 5.	" " 5 cs. dft.....	1,000	
15.	" " shortage, raft VI, 9,089 ft., at 15.....	136 33	136 33
21.	" " cash.....	50	50
23.	" " " Brasser .....	30	30
" "	" " .....	500	500
30.	" " Stillwater mill, Str. Rob't Dodds.....	328 44	

Oct.	4.	"	cash, s/d.....	1,500	1,500
	19.	"	".....	525	525
	"	"	shortage, raft VII, 1,593 ft., at 15.....	23 90	23 90
	28.	"	5 ds. dft., 1,500; 10 ce. dft., 1,500.....	3,000 00	3,000
	27.	"	cash, wharf-ge pd. city.....	4 29	
	31.	"	Stillwater mill, Brasser.....	1,039 00	1,039
	"	"	" { Oct. 13, \$50 }.....	100	
	"	"	" { Oct. 25, \$50 }.....		
	21.	"	lumber to Str. Dodds.....	6 75	6 75
	31.	"	Tom Parker, dropping pieces, Oct. 25 & 26...	100	60
Nov.	14.	"	cash, wharfage pd. city.....	30 72	
	15.	"	5 cs. dft.....	1,500	1,500
	"	"	shortage, raft VIII, 9,342 ft., at 15.....	140 13	140 13

355

Nov. 15. To Alton Harbor Co.:

72 cribs, 8 days.... 576

72 " 9 " .... 648

1,224 days.... 37 80

" " shortage, raft VII, 46,500 strg., 2..... 93

" " " " VIII, 15,000 " 2..... 30

21,512 39

Balance due John McCaffrey..... 1,035 64

1,663 77

2,699 45

E. 2 C. E.

SCHULENBERG &amp; BOECKELER LUMBER CO.

356 Accounts past due subject to draft without notice.

Folio 92.

Statement.

ST. LOUIS, Nov. 16, 1893.

M— Capt. John McCaffrey, Le Claire, Ia., to Schulenberg &amp; Boeckler Lumber Co., Dr.

Office, cor. St. Louis Ave. and Hall St.

Charges on remittances must in all cases be prepaid.

If incorrect, please notify us at once.

CR.

1893.

Ap'l 17. Running "Cat Tail" raft:

168 cribs at 11,700 ft.. 1,965,600

Less 4 cribs, 20, 21.... 11,300

1,954,300 at 56½c. \$1,099 27

May 15. 165 cribs at 26 cs. .... 1,930,500

Dock load. .... 5,620

1,936,120 at 1.12½ 2,178 13

Raft I.

June 1. 184 cribs at 26 cs. .... 2,152,800

Loose lumber ... .... 23,772

2,176,572 at 1.12½ 2,448 46

## Raft II.

"	19.	192 cribs at 26c. (450)....	2,246,400		
		Loose lumber....	11,752		
			<hr/>		
			2,258,152	at 1.12½	2,540 42

## Raft III.

July	11.	168 cribs, 26 cs. (450)....	1,965,600		
		Dock load....	12,962		
			<hr/>		
			1,978,562	at 1.12½	2,225 87

## Raft IV.

357					
Aug.	29.	192 cribs, 26 cs. (450)....	2,246,400		
		Loose lbr....	3,324		
			<hr/>		
			2,249,724	at 1.12½	2,530 94

## Raft V.

Sep.	9.	188 cribs, 26 cs. (450). . .	2,199,600		
	3	" 25½ (450) . . .	34,425		
	1	" 25 (450) . . . . .	11,250		
		Loose lbr....	4,693		
			<hr/>		
			2,249,968	at 1.12½	2,531 21

## Raft VI.

Oct.	23.	234 cribs, 26 cs. (450)....	2,737,800		
		Dock load . . . . .	49,518		
			<hr/>		
			2,787,318	at 1.12½	3,135 73

## Raft VII.

Nov.	15.	287 cribs, 26 cs. (450)....	3,357,900		
	1	" 22 (450)....	9,900		
		Dock load . . . . .	53,100		
		Loose lumber . . . . .	8,283		
			<hr/>		
			3,429,183	at 1.12½	3,857 82
					<hr/>
					\$22,348 03

## Raft VIII.

19,065,599 ft. at 1.12½ . . . . .	\$21,448 79
1,954,300 " " 56¼ . . . . .	1,099 27
<hr/>	<hr/>
21,019,899	\$22,548 06

Exhibit I. Credit sheet.

358 And being cross examined by counsel for the complainant, the witness, E. L. WILLITS, testified as follows :

Q. X. What is that entry, Mr. Willits ?

A. Received of the steamer Robert Dodds, October 26th, 1894 : Received of steamer Robert Dodds, Schulenberg & Boeckeler L'b'r Co., 8 strings of lumber, 144 cribs.

Q. X. When did you say you made that entry ?

A. That evening after I got home from the raft.

Q. X. And the next morning you wrote the card ?

A. Yes, sir.

Q. X. Look at that, will you ? That card states 8 strings of lumber, 21 cribs long ; that would make 168 cribs.

A. Yes ; that is a mistake.

Q. X. How did you come to make that card that way if you made the entry the night before in that book ?

A. I don't know.

Q. X. Will you let me see the entry in that book ?

A. Yes, sir.

Q. X. Do you remember from memory what date they put the raft there ?

A. There is a leaf turned down on the back of that leaf.

Q. X. You are employed by the month by the Burlington Lumber Co. ?

A. Yes. I don't know as it is by the month ; I work all the year round.

Q. X. Do you work by the month or the year ?

A. By the year, I suppose.

Q. X. What do they pay you ?

A. They pay me a dollar a day.

Q. X. A dollar a day the year round ?

A. Yes, sir.

359 Q. X. From year to year without reference to whether there are any rafts there ?

A. Yes, sir.

Q. X. They own considerable shore privilege there ?

A. Yes, sir ; they own considerable.

Q. X. Did they own where this raft was tied up ?

A. They have a lease.

Q. X. They have title to some of the shore, have they not ?

A. Yes, sir.

Q. X. They have possession, have they not ?

A. Yes, sir.

Q. X. Was it to tie rafts to ?

A. Yes, sir.

Q. X. Now, under your arrangement with them, you have to take care of all rafts put in there—tied to where they have the shore privilege ?

A. Yes, sir.

Q. X. You report to them all the rafts and boats that tied up there ?

A. Not always to them directly.

Q. X. You get from them a dollar a day ?

A. Yes, sir.

Q. X. Then this letter is wrong there, "On account of taking care of boat and raft" tied to the shore ?

A. Yes, sir.

Q. X. Sometimes a man comes there and pays you and takes away the raft and pays you at the time ?

A. No, sir.

Q. X. He never pays you ?

A. No, sir.

360 Q. X. He never does ?

A. No, sir.

Q. X. What did you do about this raft that was in there in 1893? Who paid you for that ?

A. I never got any pay for that, only as I reported it to the Burlington Lumber Company in the spring, when I come to make my statement what was done last year.

Q. X. You reported this Schulenburg & Boeckeler raft in 1893 to the Burlington Lumber Company ?

A. It was reported in April.

Q. X. You reported it to them ?

A. Yes, sir.

Q. X. That contract you made with them under which you was working is the only employment you had by anybody to watch rafts tied to their shore ?

A. I think it is.

Q. X. You reported to them this \$60 for watching this boat ?

A. Yes, sir.

Q. X. Did you report to them the charges for watching that raft ?

A. No, sir ; I reported at the time I was there. I had no charges on the raft.

Q. X. It was tied up to their shore ?

A. Yes, sir.

Q. X. Why did you have charges on them ?

A. I reported to them how long rafts were in there and who they belonged to, and they made the collections of these parties.

Q. X. They made the collections of these parties ?

A. Yes, sir.

Q. X. You don't know who they collected of ?

A. No, sir.

Q. X. That is what you did that day ; you reported to the  
361 Burlington Lumber Company ?

A. Yes, sir.

Q. X. Did you make a report of that raft ?

A. Yes, sir.

Q. X. Did you make a report of the \$60 you was to have for watching the raft, or rather for watching the boat ?

A. I went down there personally ; I went down to Burlington myself.

Q. X. That is the way you made that report ?

A. Yes, sir.

Q. X. You never had any contract with the Schulenberg & Boeckeler Lumber Company made with them or any of their agents during 1893 or 1894?

A. No, sir.

Q. X. When the raft was left there in the first place let me ask you if they didn't leave a coal barge attached to it.

A. Yes, sir.

Q. X. At the lower end of it?

A. Yes, sir.

Q. X. At the lower end or upper end?

A. At the upper end, at the stern of the raft.

Q. X. At the stern of the raft?

A. Yes, sir.

Q. X. That barge was attached to the raft and remained there until some time in the spring succeeding?

A. Yes, sir.

Q. X. After the ice went out of the river?

A. Until the opening of navigation.

Q. X. Do you remember this now in your own mind of giving anybody directions where they should put the lines on that raft when Tromley brought it in there?

362 A. Yes, sir.

Q. X. Who did you give any directions to?

A. To Frank McCaffrey; he was the mate.

Q. X. What did you tell him?

A. I showed him which trees to line to—to run the lines to.

Q. X. They put out two lines?

A. Yes, sir.

Q. X. Two or three?

A. Two—that is, Schulenberg & Boeckeler lines.

Q. X. Did they put any other lines out that time?

A. They put some of their own out.

Q. X. When there first?

A. No; the last time.

Q. X. Did you give them any directions the first time where they should put the lines?

A. I told them which trees to hitch to.

Q. X. Who did you give directions to?

A. The mate; that is my recollection. He is the man who has charge of the lines.

Q. X. How many lines did you put out then?

A. Two in my recollection.

Q. X. Those lines remained on there until the institution of this suit?

A. Yes, sir.

Q. X. Where were these lines?

A. One was down near the bow, and the other was run from the check-works out to the shore.

Q. X. I am asking you about McCaffrey's lines—those are the ones you mean?

A. Yes, sir.

Q. X. Was there more than one line attached to that raft  
363 from the check-works to the raft at any time?

A. From the shore to the boat and came back.

Q. X. How many check-works alongside the raft?

A. There was only one on this raft.

Q. X. Only one on this raft?

A. Yes, sir.

Q. X. Was there more than one line attached to this business at  
any time through the winter?

A. Yes, sir.

Q. X. Where was it attached?

A. To the boat.

Q. X. When was it attached?

A. After the boat came back.

Q. X. After the boat came back?

A. Yes, sir.

Q. X. That made two lines from the check-works to the shore?

A. Yes, sir.

Q. X. So that the same line—the other end—was attached to the  
boat?

A. Not according to my recollection. These lines you speak of  
were not put on when the raft was first put in there.

Q. X. That is on the check-works?

A. They extended these lines onto the boat; these were put out  
afterwards.

Q. X. So there were two lines from the check-works to the shore?

A. Yes, sir.

Q. X. Now, when they started down you told Capt. Tromley, in  
substance, if they wanted the raft to lay there over winter it would  
need more lines?

A. Yes, sir.

Q. X. That the two lines they had put on would not be  
364 sufficient in your judgment?

A. They didn't put the lines out till the boat returned.

Q. X. The two they had on there would not be sufficient to hold it  
during the winter?

A. No, sir; I didn't think so.

Q. X. In your judgment, two lines would not have been suffi-  
cient to hold the raft during the winter?

A. No, sir.

Q. X. What kind of lines were they?

A. They were good lines.

Q. X. What was the quality of the lines they brought back?

A. The second line was not first class.

Q. X. One was a first-class line?

A. Yes, sir; they had been used.

Q. X. If these lines that McCaffrey put on would not hold that  
raft, then these two lines of no better quality would not?

A. No, sir.



Q. X. Is it true when the raft was taken away one of the lines that belonged to Schulenburg & Boeckeler Lumber Co. was broken?

A. Yes, sir.

Q. X. One or both?

A. One only.

Q. X. It was broken?

A. Yes, sir.

Q. X. If it had not been for the lines belonging to McCaffrey that raft would have gotten away?

A. No, sir.

Q. X. The other line would hold it?

365 A. Yes; it didn't have any effect on holding it.

Q. X. What caused that line to break?

A. The weight of the ice moving.

Q. X. It broke one line. If only one left it would have taken it out?

A. It was broken before.

Q. X. What became of that raft; that raft that laid against the bank, that ran on to the shore? Do you think those other ropes didn't have anything to do with holding it?

A. Not much, although there was a good strain on them.

Q. X. If there had been ropes at the stern the stern would come further out?

A. No, sir; one was on to the shore.

Q. X. When they came back there they put on these two lines of Schulenberg & Boeckeler Lumber Company?

A. Yes, sir.

Q. X. What other lines?

A. They put on some other lines; I don't remember how many.

Q. X. All the lines that were put on there remained there?

A. Yes, sir.

Q. X. Until after this proceeding was begun?

A. Yes, sir; that is my recollection.

Q. X. Were they on there at the time Baker was there?

A. I think they were.

Q. X. Now, when they came back they wanted you to give a receipt for that raft?

A. They asked for a receipt.

Q. X. You refused to do that?

A. Yes, sir.

Q. X. If you was acting for Schulenberg & Boeckeler  
366 Lumber Co., why didn't you give a receipt?

A. I don't know any particular reason, more than I had not been in the habit of giving receipts in this way, and I didn't know anything about the cribs. I knew there were 8 strings of lumber, and I didn't want to take any responsibility in case it came short.

Q. X. If you were acting for Schulenberg & Boeckeler Lumber Co. would you have been giving the receipt to Schulenberg & Boeckeler Lumber Company?

A. I didn't want to receipt for the top-loading.

Q. X. If you had given the receipt to Schulenberg & Boeckeler Lumber Co.—

A. Schulenberg & Boeckeler Lumber Company would not have been mentioned in the receipt.

Q. X. Would you have signed by your own name as agent?

A. I would have signed Willits, watchman.

Q. X. The only reason you didn't give them that kind of a receipt you didn't want to be responsible for the top-loading?

A. Yes, sir.

Q. X. You did count the deck-loading?

A. Yes, sir.

Q. X. You didn't give any receipt?

A. No; not what I call a receipt. It seems to me that he made a statement of account, and I think I signed it as being correct.

Q. X. What did you do, if you recollect?

A. Nothing, only I signed it as being correct statement of the raft.

Q. X. You didn't sign a receipt?

A. I didn't think I signed a receipt; at least, I didn't so understand it.

Q. X. Is this the document?

A. I presume it is. I see my name to it.

367 Q. X. That is your signature?

A. Yes, sir.

Counsel for the complainant desires to offer the statement in evidence, and the same is marked Complainant's Exhibit "Z," and is in the words and figures following, to wit:

#### PL'T'F' EXHIBIT "Z."

I counted deck loading with J. McCaffrey, Jr., and result- as folls.:

7,370 bdls. lath.

3,782 " shingles.

242 timbers.

168 pickets.

E. L. WILLITS.

(The following date in pencil-mark :)

Nov. 4th, '94.

Q. X. That was done when they came back?

A. Yes, sir.

Q. X. Did you count the cribs in that raft when they first went in there and left it there?

A. No, sir.

Q. X. How did you come to enter in your book 144 cribs?

A. I asked the captain the size of it, and he said 8 by 18; that is my recollection.

Q. X. You didn't count them at all, the number of cribs there?

A. No, sir.

Q. X. Now, when Howard Baker came up there you counted it again?

A. Yes, sir.

368 Q. X. You counted the deck-loading?

A. Yes, sir.

Q. X. You counted the cribs?

A. No, sir; I think not.

Q. X. You just counted the deck-loading?

A. Yes, sir.

Q. X. How long did it take you to count it?

A. Seven or eight hours. We had to keep each quality of shingles apart, and we turned over a good many piles that had to be turned over.

Q. X. You finally counted it?

A. Yes; we kept each quality separate. They were piled together more or less, and we had to move the shingles.

Q. X. You had to move each bunch to see what the quality was?

A. Yes, sir; to see what they were. We just counted the bunches.

Q. X. So, then, you never presented to the Burlington Lumber Company the account against McCaffrey for watching there?

A. For watching the raft?

Q. X. Yes, sir.

A. No, sir.

Q. X. You presented a bill for watching the boat?

A. Yes, sir.

Q. X. That was presented to the Burlington Lumber Company?

A. Yes, sir.

Q. X. Look at that document and state what it is. Did you write that name attached there?

A. I don't know as I can read it.

Q. X. What is this paper; can you tell?

A. No; I can't read that.

Q. X. Do you recognize that as signature of one of the officers of the company?

A. He is the book-keeper in the company's office.

369 Q. X. Can you tell whether that is his signature?

A. No, sir; I can't tell.

Q. X. You, of your own knowledge, don't know whether the bill was paid or not?

A. It was never paid to me. I left the bill with the company. I don't know whether it has been settled for or not.

Q. X. You don't know anything about it?

A. No, sir.

Q. X. This card that was presented to you here, that was written by Knapp, Stout & Co. Co., when did you received that?

A. I can't say, fixing the day. It usually gets in the next day after it is mailed.

Q. X. This postal card, when did you receive it?

A. November 6th, I guess.

Q. X. Do you remember when you received it?

A. No, sir; not the date.

Q. X. To that card you made reply, did you?

A. No; I don't remember making any reply.

Q. X. Now, that letter, can you tell when you received that letter of the 12th from Knapp, Stout & Co. Company?

A. I have no means of knowing the date. I suppose I would get it the next morning after that.

Q. X. What do you remember about it?

A. I don't remember anything.

Q. X. Do you remember how long it was after Baker was there that you got that?

A. No, sir; I don't.

Q. X. When Baker came there did he present to you any paper?

A. I think he presented an order; yes.

Q. X. What did you do with that order?

A. I retained it—I kept it.

370 X Q. After you counted that raft you gave him a receipt for it?

A. Yes, sir.

X Q. The only thing that was done by you and him was to count the top loading?

A. That is my recollection.

X Q. He gave you that order?

A. Yes, sir.

X Q. And you gave him the receipt?

A. Yes, sir.

X Q. The receipt that has been introduced in evidence here?

A. Yes, sir.

X Q. At the time the boat was there, on October 26th and November 4th, the name of Schulenberg and Boeckeler was not mentioned between you and them, so far as you remember?

A. I don't think it was.

X Q. You remember that raft belonged to Sculenberg & Boeckeler Lumber Company because this man towed for Schulenberg & Boeckeler Lumber Company?

A. That was my understanding.

X Q. Is it not true that when McCaffrey was down there, along in April, he came down on his steamboat, and that he offered to pay you for watching the raft?

A. No, sir.

X Q. Didn't you have a conversation there with him in which he told you that he would pay you?

A. No, sir.

X Q. And didn't he offer you money there for your services?

A. No, sir.

X Q. And didn't you refuse to take money for watching the raft?

371 A. We were not talking about the raft when he offered to pay me.

X Q. You were not talking about the raft?

A. No, sir.

X Q. What did you say to him when he offered to pay you?

A. I asked him about the pay for watching the boat; the raft was not mentioned.

X Q. What was said?

A. I said to him, I would like to have a settlement about watching the boat, and he said that I had charged too much, was my recollection; anyway, he objected to paying the bill and offered me \$25.00.

X Q. What he said was, when two or three men was watching he didn't think you ought to charge him so much as \$60.00?

A. He may have said that; I don't remember now.

X Q. Didn't he offer to pay you for watching the raft? *Didn't he offer to pay you for watching the raft?*

A. I don't remember any such conversation.

X Q. You saw him turn these keys over to Woods?

A. I think I gave him the key to the upper room.

X Q. Do you remember the circumstance of Frank McCaffrey coming down there?

A. Yes, sir.

X Q. Didn't you turn the key over to McCaffrey and he turn it over to Woods?

A. I know I gave Woods one key—it may have been to the deck-room—and I think I saw him at work on the raft about nine o'clock. I saw somebody walking on the deck, and I went down, and it was Frank McCaffrey.

X Q. Didn't you tell McCaffrey and Woods, or didn't you tell McCaffrey in the presence of Woods, on the occasion when you delivered up the keys to him, that you was watching that raft  
372 and the boat for "you folks," meaning McCaffreys?

A. No, sir; I don't think I told him that.

X Q. Are you sure you didn't?

A. I don't recollect telling him that.

X Q. Didn't you ask him how they came to hire another man to watch the raft and boat?

A. Yes, sir.

X Q. And didn't they say because they wanted a man all the time—one in the daytime and one in the night?

A. Yes, sir.

X Q. Didn't he tell you they didn't mean to discharge you?

A. I am not positive; I think he told me that.

X Q. He didn't discharge you or attempt to?

A. No, sir.

X Q. Didn't you say to him then, or didn't he say to you then, that he was watching the raft for "you folks," meaning McCaffreys, and that he would not give up or give it up if anybody called for it without hearing from McCaffrey or Tromley?

A. I don't remember telling him that.

X Q. On this occasion, when McCaffrey came down on the Duke, who was present besides you when this conversation took place between you and him?

A. Nobody.

X Q. Where was the conversation?

A. On the bow of the raft, near the bow of the boat.

X Q. How far from the steamer Duke?

A. About twenty feet.

X Q. It was up against the bow of the steamer—the end of the raft or the side of the raft?

A. The end of the raft.

X Q. It lay against the end of the raft?

A. Yes, sir.

273 X Q. You was within twenty feet of the end of the raft?

A. I think, on the first crib, and the cribs are thirty feet long.

X Q. Were there men on the boat?

A. Yes, sir.

X Q. Were they within hearing?

A. Were they in hearing?

X Q. Yes, sir.

A. I suppose they could have heard.

X Q. Did you see Jack McCaffrey, the young man?

A. No, sir.

X Q. Do you know he was there?

A. I saw him later in the day—some of the boys; I don't remember which one.

X Q. Jack was there all the time?

A. Yes; he was there and had been for some time.

X Q. Was he not down to the raft with his father and near him?

A. I think he was.

X Q. Didn't you see him there about this time?

A. There was a crowd of people besides the old gentleman when we had the conversation about paying. His son and I were together afterwards.

X Q. In that conversation he pulled some money out of his pocket and offered it to you?

A. No, sir.

X Q. You say he didn't?

A. Yes, sir.

X Q. Who hired you to watch the raft when it was first put in there?

A. I don't know as anybody; I supposed I was in the employ of Schulenberg and Boeckeler Lumber Company.

374 X Q. How did you suppose that? You didn't have any contract with anybody but the Burlington Lumber Company?

A. I was acting under their orders.

X Q. Tromley told you he wanted to leave that raft in your care?

A. I don't know as he did.

X Q. Didn't he tell you he wanted to leave it there ten or fifteen days?

A. I don't know as he said that.

X Q. What was it that he said?

A. He said he wanted to leave it there until he came back from St. Louis.

X Q. He said he wanted to leave it in your care until he came back from St. Louis?

A. No; he didn't.

X Q. What did he say?

A. He said he would come back and see where I wanted it placed.

X Q. What was the first thing that was said?

A. The first thing was I asked him if he was going to leave it there over winter, and he said he could not tell until he had delivered the other piece.

X Q. Was that the first thing he said when you saw him?

A. I don't know as it was.

X Q. Didn't he say he wanted to leave that piece and asked you where he would take it?

A. Yes, sir.

X Q. He wanted to leave that in your care and wanted you to watch it?

A. No, sir; he didn't say that.

X Q. He didn't say anything about it?

375 A. No, sir.

X Q. How long have you had that card with Schulenberg and Boeckeler's name on?

A. Two or three years.

X Q. You had it since and before 1893?

A. They would send up a package for me to use from time to time.

And being further examined by counsel for the defendant, the witness WILLITS testified as follows:

Q. What is it you report to the Burlington Lumber Company?

A. The number of rafts, who they belong to, and the time they are in there.

Q. That you report to them?

A. Yes, sir.

Q. Your arrangement with Knapp, Stout and Company Co. was a contract?

A. Yes, sir.

Q. That was different from anything else?

A. Yes, sir.

Q. And separate from it?

A. Yes, sir.

Q. You made your arrangement with them for a dollar a day?

A. Yes, sir.

Q. It was a contract with them?

A. Yes, sir.

Q. Now take this postal card, number 6. When is your recollection as to when you got this card dated St. Louis the 6th of November? When did you get that card?

A. If it was mailed the evening before I would get it the next morning at seven o'clock.

376 Q. It was marked mailed at St. Louis on the 6th.

A. I would naturally get it on the 7th in the morning if nothing happened to delay it in any way.

And being further cross-examined by counsel for the complainant, the witness WILLETS testified as follows :

X Q. Your compensation watching for Knapp, Stout and Company Co. was not increased by the fact that you watched the second raft ?

A. No, sir.

X Q. You had the same shore privilege for them that you used to tie their rafts to ?

A. Not more than the Burlington Lumber Company furnished.

X Q. Did you tie their raft to the Burlington Lumber Company's landing ?

A. They have them leased.

X Q. Knapp, Stout & Company Co. paid you besides your wages from the Burlington Lumber Company ?

A. Yes, sir.

X Q. You got a dollar a day from the Burlington Lumber Company the year round ?

A. Yes, sir.

X Q. And you got a dollar a day from the Knapp, Stout and Company Company when you watched for them ?

A. Yes, sir.

X Q. Is that your individual property ?

A. Yes, sir.

X Q. Did you turn that in to the Burlington Lumber Company ? What arrangement was there by which their rafts were tied up to the Burlington Lumber Company's landing ?

A. I don't know the arrangement between the two companies.

377 X Q. You don't know what arrangement they have ?

A. I know the Burlington Lumber Company furnishes them shore privileges ; I don't know what the arrangement is.

X Q. In your individual capacity you did not furnish any shore privileges ?

A. No, sir.

X Q. When Mr. Baker was there you showed him the raft that belonged to Schulenberg and Boeckeler ?

A. Yes, sir.

X Q. And also the lines that belonged to them ?

A. Yes, sir.

X Q. There was nothing to prevent him seeing the other lines on the side of the raft ?

A. No, sir ; I suppose not ; they were out.

JOHN McCaffrey, Jr., recalled for further examination, testified as follows :

Q. What was the burden of that steamer Robert Dodds ?

A. Really I can't tell you.

Q. About how much is it ?

A. Sometimes rated up and sometimes rated low. I can't *not* you what it is.



Q. You can't tell that; you don't know that?

A. No, sir; I could not tell within 20 tons—50 tons; perhaps 100 tons.

Q. 100 tons, you think?

A. Yes; 100 to 120 tons.

Q. Can you tell the date this was left there, this account of yours with the Schulenberg & Boeckeler Lumber Company, with the assignees? Do you recollect the date it was sworn to as  
378 January 28th, 1895? Mr. Boeckeler said he thought it was that day also. Do you know what that date is?

A. That I filed my claim with the assignee?

Q. Do you recollect what time in January it was?

A. No, sir.

Q. It was in January, was it?

A. I don't remember that.

Q. Was you present when it was filed?

A. I don't remember; I was down there with Judge Lubeke.

Q. Did you go in there and leave it with him?

A. I don't remember whether I was there at the time or not.

W. L. BOECKELER, recalled, testified as follows:

Q. Will you please state when this claim of John McCaffrey's against the estate of the Schulenberg & Boeckeler Lumber Company was filed with the assignee?

A. It was left there one of the days between the 27th and the 29 of January, 1895.

Q. One of those three days?

A. Yes, sir.

And being cross-examined by counsel for the complainant, the witness BOECKELER testified as follows:

X Q. Where is the assignee's office?

A. On Johnson street, St. Louis.

X Q. Where did you put in your time during these days you mentioned?

A. I was in his office all those days.

X Q. You was in his office?

A. Yes, sir.

379 X Q. What are the days?

A. I think the 27th, 28th, and 29th of January.

X Q. The assignee is an attorney?

A. Yes, sir.

X Q. It was in his attorney's office where this took place?

A. Yes, sir.

X Q. In his office where he practiced law?

A. Yes, sir.

X Q. Who brought that claim?

A. I think Judge Lubeck brought it.

X Q. Do you remember that?

A. Yes, sir.

X Q. What time in the day did he come?

A. I don't know—between 12 and 2; the assignee staid there all day.

X Q. You don't have any remembrance of anybody bringing that claim and leaving it—you have no distinct remembrance of anybody bringing it in?

A. I think I remember that Judge Luebke brought that claim there.

X Q. You think Judge Luebke brought that claim here on one of those days?

A. I think so; there was so many came in that I paid no especial attention, but I think Judge Luebke brought it.

X Q. You don't remember much about that claim?

A. I remember that claim coming in. I have had it in my hands several times in Tittman's office.

X Q. Do you remember having it in your hands at that time?

A. I don't know.

X Q. Are you sure you saw it at that time yourself?

A. Yes, sir.

X Q. What?

380 A. Yes, sir; I did.

X Q. What is there about the transaction that fixes it upon your mind that you saw that claim there?

A. Because our book-keeper here was the book-keeper there and was allowing all these claims, and this was brought in there and not allowed and we expected to have a trial.

X Q. Now, let me ask you something about another matter, Mr. Boeckeler. Don't you remember in the winter of 1893 and 1894 you had a raft wintered—was run into Cat Tail slough by your direction and was in the care of Rexford Bros.?

A. As I said, I don't remember any raft having been in Cat Tail slough by our direction. The only raft that I know of in Cat Tail slough was the raft left from the season of 1892 and 1893 and was the first raft that Capt. McCaffrey brought down.

X Q. The first raft he brought from Cat Tail slough?

A. Yes, sir; and we paid Rexford Bros. for the harbor charges.

X Q. Don't you remember the succeeding winter a raft being left there?

A. No, sir; I don't remember.

X Q. Don't you remember talking about it yesterday—about Rexford Bros. watching it?

A. I don't remember it.

X Q. You don't remember it?

A. If I remembered it I would say so.

X Q. By your theory in this case, when the raft was delivered in Cat Tail slough it would be delivered to you the same as this?

A. No, sir.

X Q. Why not?

A. I don't know anything about that.

X Q. Why not, if not?

381 A. I don't know anything about it.

X Q. That would be the fact?

A. If we had ordered him to put it there.

X Q. If you didn't think it was in fact delivered there, yet he would be entitled to bring it that far?

A. Yes, sir; he would be entitled as far as he got and we gave it to him.

X Q. Did you give him any credit for bringing the raft to Cat Tail slough in the fall of 1893?

A. I would have to look over our books for that, the records I have kept and the ledger account.

X Q. Look at this and see if it didn't come from your office. I desire to ask you if there is any credit on your bookd for bringing the raft to Cat Tail slough in the fall of 1893.

A. I don't see any credits here; anything in the fall of 1893; no mention here of Cat Tail slough.

X Q. I will ask you if you recognize that memorandum and figures on that as being in the handwriting of any of your employees at Stillwater.

A. I can't tell by the figures at all. I know it is on our letter-head there.

X Q. The last raft credited on that credit sheet is raft No. 8?

A. Yes, sir.

X Q. When you fixed your books after you made the sale, you gave Captain McCaffrey credit for bringing the raft as far as New Boston?

A. We gave him credit for bringing half a raft to St. Louis and we gave a *pro rate* credit for bringing the raft to Boston bay that he left there.

X Q. Now, if there was any raft left in Cat Tail slough 382 the winter before, can you tell any reason why you didn't make your books the same way that year?

A. I don't know.

Account of John McCaffrey with Schulenberg Lumber Co. for 1893 offered, and is in words and figures as set out on pages 275, 276, 277, 278 hereof, marked Comp. "Q."

And being further examined by counsel for the defendant, the witness, WM. BOECKELER, testified as follows:

Q. Was any raft you ever had put in Cat Tail slough disposed of in Cat Tail slough—sold in Cat Tail slough?

A. No, sir.

HOWARD BAKER, recalled for further cross-examination, testified as follows:

X Q. Mr. Baker, could you see that coal barge that was tied to the stern of the raft—that was tied there?

A. No, sir.

X Q. You could not see that coal barge there?

A. I didn't see any coal barge.

X Q. I understand you to say you laid up the Kit Carson in Quincy bay?

A. No, sir.

X Q. Was you the captain?

A. No, sir; I was the mate.

X Q. In what capacity was you employed on steamboats?

A. I was mate and clerk.

383 X Q. How did you get the title of captain that Mr. Wise gives you?

A. Well, sir, I have master's papers.

X Q. Was you ever a captain of any boat?

A. I have been captain of two or three ferry-boats at Warsaw, Illinois.

And here the defendant- rested their case.

And the complainant, by way of rebuttal, offered in evidence the following:

FRANK McCaffrey, called in rebuttal, testified as follows:

Q. When you went down to New Boston on the 17th of November, do you remember having any conversation with Mr. Willits in the presence of Woods on the steamboat?

A. Yes, sir.

Q. Did Mr. Willits say, in the course of that conversation, that he was watching the raft and boat for you folks?

A. Yes, sir; he did.

X Q. Did he say, in the course of that conversation, that he would never deliver the raft up if anybody came for it without hearing from McCaffrey?

A. He did.

Q. Was this the time you got the keys from Mr. Willits and delivered them to Woods?

Question objected to by counsel for the defendant; which objection was overruled by the court; to which ruling of the court the counsel for the defendant then and there excepted.

384 A. I got the key of the cabin from him at that time; is the only key I got from him.

Q. Did you get any other key from him at any other time?

A. No, sir.

Q. Now, did he say in that conversation that he would not have given up that raft if anybody had come for it without hearing from McCaffrey or Tromley?

A. Yes, sir.

X Q. Do you remember whether Woods was present when this last was said?

A. I don't know how long Woods was there; he was standing near there; we were getting ready to go into the deck-room.

Q. Was you on the boat that brought the raft down to Cat Tail slough in the fall of 1893?

A. Yes, sir.

Q. What boat brought it down ?

A. We brought it down.

Q. What boat brought it down ?

A. The Schulenberg and the Dodds brought it down and laid it up.

Q. You used both boats at that time ?

A. Yes, sir.

And being cross-examined by counsel for the defendant, the witness, FRANK McCAFFREY, testified as follows :

X Q. You afterwards took the raft down in the spring ?

A. Yes, sir.

— Q. Now, what date was it when this conversation took place that you speak of with Mr. Willits ?

A. On the morning of the 18th of November.

385 X Q. On the 18th of what month ?

A. Of November, the next morning after I got to New Boston.

X Q. Did you make any memorandum of it ?

A. No, sir.

X Q. Is it a mere matter of memory ?

A. It is pretty well established in my mind this morning.

X Q. Did you make any memorandum of the date of any kind or what the conversation was, or is it a mere matter of memory ?

A. Yes, sir ; that is all.

X Q. It is a mere matter of memory ?

A. Yes, sir ; that is all.

X Q. What was it he said—what was it Willits said ?

A. We were standing talking, and I had been trying to get into the cabin and I could not, and Woods told me he could get into the back part, where he had been sleeping, and I came downstairs and had been walking around a little bit and Willits came down there, and I was on the lower deck—

X Q. What was it he said ?

A. We stood there talking, and he came over there, and I waited for him until he came down there, and he finally said he wanted to know why we had hired Woods, and I said we wanted Woods to sleep there at nights and him to watch in the daytime—

X Q. That was on the boat ?

A. Yes, sir.

X Q. What is the next ?

A. He said, I can watch this, and I said, I don't think you can ; we want a man in the daytime and in the night-time, and he said, I am not working for the Schulenberg & Boeckeler people ; I am working for you people.

X Q. That is all he said to you at that time ?

386 A. No, sir ; that was included in this time.

X Q. Is that all he said at that time ?

A. No, sir ; he said he would not deliver the raft up without orders from Capt. Tromley or my father.

ARTHUR WOODS, a witness called by the complainant in rebuttal, testified as follows:

Q. You were sworn yesterday?

A. Yes, sir.

Q. Do you remember the circumstances of being on the boat at the time Frank McCaffrey got the key from Ed. Willits?

A. We were on the boat the morning he came from Davenport.

Q. Do you remember about him getting the key?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Was there any conversation there between McCaffrey and Mr. Willits?

A. Yes, sir.

Q. In the course of that conversation did you hear Willits say that he was watching that raft and boat for you folks, speaking to McCaffrey? Did you hear him say that, Mr. Woods?

A. I don't understand you.

Q. In that conversation did you hear Willits say to Frank McCaffrey that he was watching the raft and boat for you folks?

A. Yes, sir.

Q. Did you hear him say that he would not let anybody take that raft away without hearing from Capt. Tromley or Capt. McCaffrey?

A. Well, I don't know as I did.

Q. You don't remember whether you did or not?

387 A. No, sir.

Cross-examined:

X Q. When was this conversation, Mr. Woods?

A. It was the next morning after Frank McCaffrey came from Davenport.

X Q. When was it—last May, or when?

A. Last May?

X Q. When was it—in May, or when was it?

A. It was during the time we were watching the boat and raft.

X Q. Tell us when it was. Was it in May, April, or when?

A. It was in November.

X Q. You say it was in November?

A. Yes, sir.

X Q. What time in November?

A. About the 17th or 18th.

X Q. What makes you think it was the 17th? Did you make any memorandum of it?

A. He came down the night of the 16th.

X Q. How do you know that?

A. I don't know it; I guess.

X Q. You have been told that, if you know.

A. No, sir.

X Q. How do you know it?

A. I didn't put it down ; no, sir.

X Q. Then how do you recollect it, or do you recollect it ?

A. Yes, sir.

X Q. Then you don't know just when it was when he came down ; you don't pretend to know the date ?

A. It was the 17th, the way I have it.

X Q. How do you know it ?

388 A. That is the way I have it in my head.

X Q. What was it Willits said when he came down there ?

A. Willits ?

X Q. Yes.

A. He said he was employed by Schulenberg and Boeckeler Lumber Company.

X Q. He said he was employed by Schulenberg and Boeckeler Lumber Company ?

A. Yes ; he said he was employed by Schulenberg and Boeckeler.

X Q. He was employed by whom ?

A. He told Frank——

X Q. He was employed by Frank ?

A. Yes, sir.

X Q. What was it he said ? What did he say ?

A. He was employed by Frank McCaffrey.

X Q. Where was you when this conversation took place ?

A. Up towards the bow of the boat, along about the coal bunks.

X Q. You had been talking about a key to the boat ; everything was about the boat, was it not ?

A. I guess it was ?

And being examined by counsel for the complainant, the witness Woods testified as follows :

Q. Did he say he was employed by Frank McCaffrey or you folks ; was not what he said you folks ?

A. Yes ; I think it was.

Q. What name did he use when he spoke about employed ; who did he say he was employed by ?

A. He said he was employed by " you folks ; " Frank was talking to him there.

Q. It was Frank McCaffrey he was speaking to ?

A. Yes, sir.

389 And being cross-examined by counsel for the defendant, the witness Woods testified as follows :

X Q. That was all about the boat ?

A. That is all I can remember of.

And being further examined by counsel for the complainant, the witness Woods testified as follows :

Q. Do you mean that was all that was said or that was all you can remember ?

A. That is all that was said there at that time.

And being further cross-examined by counsel for the defendant, the witness Woods testified as follows:

X Q. What was you talking about? Was it about the boat?

A. After that we went back into the engine-room and looked at the pump.

X Q. What was you talking about that time; was it about the boat? You was on the boat and talking about the boat, was you not?

A. They were talking there; he asked Frank about who hired me.

X Q. You was on the boat, and you was talking about the boat at that time? You had got on the boat and everything you said was in regard to it?

A. Yes, sir.

X Q. What you was talking about was the boat?

A. I was on the boat; I was near the coal bunk.

And being further examined by counsel for the complainant, the witness Woods testified as follows:

Q. You was on the boat when you was talking?

A. Yes, sir.

390 Q. What you was talking about watching was the raft and boat?

A. Yes, sir.

JOHN McCaffrey, Jr., called by the complainant in rebuttal, testified as follows:

Q. You were on the steamer Robert Dodds in the fall of 1893?

A. Yes, sir.

Q. What was the last work done under the contract that fall with the steamer?

A. We had a raft from Stillwater which we put in Cat Tail slough.

Q. Did any other steamer assist in the operation?

A. Yes; Helen Schulenberg.

Q. What was done there; was the raft laid up?

A. Yes, sir.

Q. Did it remain there over winter?

A. Yes, sir.

Q. Did you hear a conversation between your father and Ed. Willits when the Duke came there in the spring of 1895?

A. Yes, sir.

Q. This was in Boston bay?

A. Yes, sir.

Q. Did you hear a conversation between your father and Willits near the bow of the raft?

A. Yes, sir.

Q. In that conversation state whether or not your father offered to pay him for watching that raft.

A. Yes, sir.



Q. The time your father came down with the steamer Duke?

A. Yes, sir.

391 Q. Did he come down with the steamer Duke more than once after the ice went out?

A. No, sir.

Q. This was on the occasion when he and Willits talked together, when they came out on the bow of the raft on the day that your father came down with the Duke?

A. Yes, sir.

Q. On that occasion did your father offer to pay him for watching that raft?

A. Yes, sir.

Q. What did Willits do? Did he accept that money?

A. No, sir.

Q. When you left the raft there, in the first place, did you leave anything else besides the raft?

A. We left a barge.

Q. Had you taken that along with you?

A. Yes, sir.

Q. For what purpose?

A. It was a fuel barge.

Q. How large a barge was it?

A. Eighty feet long and sixteen feet wide.

Q. 80 feet long and sixteen feet wide?

A. Yes, sir.

Q. Empty how far does it stand out of the water?

A. Three and a half to four feet.

Q. It stands three and a half feet to four feet out of the water?

A. Yes, sir.

Q. What was done with that?

A. That was put across the stern of the raft.

Q. Was it attached to the raft?

392 A. Yes, sir.

Q. Did that remain until the raft was taken away?

A. It did not remain until the raft was taken away.

Q. How long did it remain?

A. Fifteen days before that.

Q. Before when?

A. Before the raft was taken away.

Q. When the boat was taken away it was taken away with that?

A. The steamer Dodds?

Q. Yes.

A. She made a trip to Burlington and went and took it away.

Q. She made a trip to Burlington in the spring and then came back and took it away?

A. Yes, sir.

And being cross-examined by counsel for the defendant, the witness, JOHN McCaffrey, Jr., testified as follows:

X Q. When was it that your father offered to pay Willits, what date was it?

A. It was on April 10th.

X Q. April when?

A. April 10th.

X Q. How do you know?

A. I put it down in the book.

X Q. April 10th, 1895?

A. Yes, sir.

X Q. Now, on April 10th you was down there, was you?

A. Yes, sir.

X Q. The boat had left at that time?

A. Yes, sir.

X Q. Had the Dodds left?

393 A. Yes, sir.

X Q. The Dodds had gone away?

A. Yes, sir.

X Q. Was not what your father and Willits were talking about the watching of the boat?

A. No, sir.

X Q. Didn't your father refuse to pay the \$60.00 for watching the boat? Didn't Tromley refuse to pay it?

A. No, sir.

X Q. It was nothing about the boat?

A. No, sir.

X Q. What was it your father offered to pay for watching the raft?

A. I didn't see how much money he offered.

X Q. Was there any talk about it?

A. No, sir.

X Q. How did he offer to pay it?

A. He pulled it out of his pocket and said, "Here is your money."

X Q. He didn't say any amount?

A. No, sir.

X Q. Or anything?

A. I didn't hear him.

X Q. Was not that talk there by Willits, was not that on account of his claim for watching the boat?

A. Not that I know of.

And being further examined by counsel for the complainant, the witness, JOHN McCaffrey, Jr., testified as follows:

Q. Did your father come down there—that is, when you telegraphed, didn't he?

394 A. Yes, sir.

Q. And that telegram is still in existence?

A. I think it is.

Counsel for the complainant produces the telegram from John McCaffrey, at Davenport, to Henry McCaffrey, at New Boston, dated November 10th, 1894, and offers same in connection with the testimony of Henry McCaffrey, and the same is marked Complainant's "X" and is in the words and figures following, to wit:

Nov. 10, 1894.

Received at 10.15 a. m.  
Dated Davenport, Iowa.

To Henry McCaffrey, New Boston:

Leave watchman on raft and come back home.

JOHN McCaffrey.

JOHN McCaffrey, a witness called in rebuttal, testified as follows:

Q. Have you paid that bill to the Burlington Lumber Company for Willits' services?

A. Yes, sir; I have paid it.

Counsel for complainant offer the bill in evidence, and the same is marked Complainant's "Y" and is in the words and figures following, to wit:

COMP. "Y."

H. S. Rand, pres't & treas.; Wm. Carson, Jr., vice-pres't & sec'y;  
Wm. Lyon, mill superintendent.

395 Burlington Lumber Company, manufacturers and dealers in  
all kinds of lumber; railroad and bridge timber a specialty.

Terms: —.

F. o. b. —.

Car No. —.

Our order No. —.

BURLINGTON, IOWA, Dec. 14, 1895.

Sold to Str. Rob't Dodds.

All bills payable in St. Louis, Chicago, or New York exchange, and if not paid at maturity, subject to sight draft without notice. Claims for allowance must be made within ten days from receipt of goods.

To watching at Boston bay season 1894-1895..... 60.00

Jan. 9, 1896.

(Name illegible.)

Q. That letter was written by your son Henry?

A. Yes, sir.

By the COURT: What is the date of it?

A. November 12th, 1894. That was written in Davenport by Henry.

Q. You say it was written by Henry?

A. It was dictated by me to Henry McCaffrey, my boy.

Q. You wrote that letter to Willits to explain why you wanted another watchman?

Question objected to by counsel for the defendant; which objection was sustained by the court; to which ruling of the court the counsel for the complainant then and there excepted.

Q. Why did you want another watchman—you had appointed your watchman?

A. Willits was not there all the time.

396 Q. What was Willits; was he the bay watchman?

A. Yes, sir; he was watching the bay—watching for everybody. A person could go in there and take out a raft and he never detect it, and never see Willits.

Q. Mr. McCaffrey, this man Willits was what was called the watchman on the bay?

A. He was what was called the bay watchman.

Q. Did you want a watchman for that raft and boat particularly?

Question objected to. Overruled, and exception noted.

A. Yes, sir; we wanted a man to be there all the time.

And here the complainant rested his case.

And the above was all the testimony introduced on the trial of the above entitled cause by either and all parties.

And inasmuch as the matters aforesaid do not fully appear of record in this suit, the complainant tenders this certificate of evidence, and prays that the same may be certified under the hand and seal of the judge of this court, and thereby made a part of the record in such cause, and the same is done accordingly this 11th day of May, 1897.

JOHN J. GLENN, *Judge*. [SEAL.]

O K.

BASSETT & B.

397 STATE OF ILLINOIS, } ss:  
Mercer County, }

In Circuit Court, March Term, 1897.

JOHN McCAFFREY ET AL.

vs.

THE SCHULENBURG-BOECKLER LUMBER CO. ET AL. }

It is hereby agreed by and between the parties hereto that the original certificate of evidence above and foregoing, instead of a copy

thereof, shall be incorporated in the transcript of the record herein by the clerk of said court.

Dated May 10th, 1897.

SCOTT & COOKE,  
*Solicitors for Complainant.*  
BAS-ETT & BASSETT,  
*Solicitors for Defendant.*

Filed in the circuit court this 13th day of May, A. D. 1897.

WM. McMANUS, *Clerk.*

GALESBURG, ILLS., May 1, 1897.

I, J. E. Blakemore, official reporter of said court at the said term, do hereby certify that the within is a full, true, & complete transcript of the evidence heard upon the trial of the above-entitled cause.

J. E. BLAKEMORE,  
*Official Reporter.*

398 The following is a copy of the appeal bond filed herein :

Know all men by these presents that we, John McCaffrey and Fred Haas, of the county of Rock Island; Charles Shuler, of Mercer county and State of Illinois, are held and firmly bound unto the Schulenburg & Boeckeler Lumber Company, Knapp, Stout & Co. Company, Eugene C. Titman and David Bronson, assignee- of the Schulenburg & Boeckeler Lumber Company, in the penal sum of three hundred (300.00) dollars; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Aledo this 30 day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

The condition of the above obligation is such that whereas the said Schulenburg & Boeckeler Lumber Co. and other obligees hereinabove mentioned did, on the 16th day of April, one thousand eight hundred and ninety-seven, at a term of the circuit court then being holded within and for the 10th judicial circuit in the county of Mercer and State of Illinois, obtain a decree against the above-bounded John McCaffrey for costs of suit, from which decree the said John McCaffrey has prayed for and obtained an appeal to the appellate court for the second district of said State :

Now, if the said John McCaffrey shall duly prosecute said appeal, and shall, moreover, pay the amount of the said decree, costs, interest, and damages rendered and to be rendered against him, the said McCaffrey, in case the said decree shall be affirmed in the said

399 appellate court, then the above obligation to be null and void ; otherwise to remain in full force and virtue.

JOHN McCAFFREY. [SEAL.]  
FRED HAAS. [SEAL.]  
C. SHULER. [SEAL.]

Filed and approved this 1st day of May, A. D. 1897.

WM. McMANUS, *Clerk.*

STATE OF ILLINOIS, }  
*Mercer County,* } <sup>88</sup> :

I, William McManus, clerk of the circuit court of Mercer county, in the State aforesaid, and keeper of the records and files of said court, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the records and files in a certain cause then pending in said court on the chancery side thereof, wherein John McCaffrey was complainant and Schulenburg and Boeckeler Company, a corporation; Knapp, Stout & Co. Company, a corporation; Eugene C. Tittman and David Bronson, assignee- of Schulenburg and Boeckeler Lumber Company, insolvent, were defendants, as the same appear from the records and files of said court now in my office remaining.

In witness whereof I have hereunto set my hand and  
 [SEAL.] affixed the seal of said court, at Aledo, Mercer county,  
 Illinois, this 17th day of May, A. D. 1897.

WM. McMANUS, *Clerk.*

400 STATE OF ILLINOIS, }  
*Mercer County.* }

JOHN McCaffrey

*vs.*

SCHULENBURG & BOECKELER LUMBER CO.  
*et al.*

} Assignment of Errors.

Comes now the complainant and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. The court erred in dismissing the bill herein and decreeing the costs against complainants.

Second. The court erred in not decreeing that complainant had a lien on the half raft for—

Towage.....	\$3,736.48
For compensation for dividing raft and towing it is separate halves.....	200.
For harbor charges.....	150.
Total.....	\$4,086.48

And in not decreeing defendants to pay same, with interest, at 5 % per annum, from Nov. 2nd, 1894, within a short day, and in default of same that the half raft in question be sold to satisfy such amount so due, with interest and costs.

SCOTT & COOKE,  
 BROCK & GRAHAM,  
*Solicitors for Complainant.*

401 STATE OF ILLINOIS, }  
*Second Appellate Court District,* } <sup>88</sup> :

I, C. C. Duffy, clerk of the appellate court in and for the said district of said State and keeper of the records and seal thereof, do

hereby certify the annexed to be the original transcript of the record and proceedings of the circuit court of Mercer county in the case of John McCaffrey *vs.* Schulenburg & Boeckler Lumber Co. *et al.* as the same was filed in my office on the 21st day of June, A. D. 1897.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Ottawa, in said State, this [SEAL.] first day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

C. C. DUFFY,  
*Clerk of the Appellate Court.*

402 At a term of the appellate court begun and held at Ottawa on Tuesday, the eighteen day of May, in the year of our Lord one thousand eight hundred and ninety-seven, within and for the second district of the State of Illinois.

Present: The Hon. O. A. Harker, presiding justice; Hon. J. D. Crabtree, justice; Hon. ———, justice; Christopher C. Duffy, clerk; Charles J. Yockey, sheriff.

Be it remembered that, to wit, on the 18th day of May, A. D. 1897, certain proceedings were had and orders made and entered of record by said court, among which is the following, viz:

JOHN MCCAFFREY <i>vs.</i> THE SCHULENBURG-BOECKLER LUMBER Co. <i>et als.</i>	}	3198. 33. Appeal from Mercer.
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Now, on this day, comes the said appellant, by Scott & Cooke and Brock & Graham, his attorneys, and moves the court for an extension of time within which to file record, abstracts, and briefs, and the court, not being fully advised in the premises, takes said motion under advisement.

MAY 19, 1897.

JOHN MCCAFFREY <i>vs.</i> THE SCHULENBURG-BOECKLER LUMBER Co. <i>et al.</i>	}	3198. 33. Appeal from Mercer.
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On this day the court, having duly considered the motion heretofore made herein and being now fully advised in the premises, allows said motion.

403 Therefore it is considered and ordered by the court that the time within which to file record, abstracts, and briefs herein be, and the same is hereby, extended twenty (20) days.

Be it remembered that, to wit, on the 29th day of June, A. D. 1897, certain proceedings were had and orders made and entered of record by said court, among which is the following, viz:

JOHN McCAFFREY	}	3198. 33. Appeal from Mercer.
<i>vs.</i>		
THE SCHULENBURG-BOECKLER LUMBER Co. <i>et als.</i>		

Now, on this day, this cause comes on for hearing in the regular call of the docket, and it appearing to the court that a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, have been duly filed, as required by law and the rules of this court in that behalf made and provided, and that this cause is here submitted upon such transcript, abstracts, briefs, and arguments for the consideration and judgment of the court—

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

Be it remembered that, to wit, on the 6th day of July, A. D. 1897, certain proceedings were had and orders made and entered of record by said court, among which is the following, viz :

404	JOHN McCAFFREY	}	3198. 33. Appeal from Mercer.
	<i>vs.</i>		
	THE SCHULENBURG-BOECKLER LUM- ber Co. <i>et al.</i>		

Now, on this day, comes the said appellant, by Scott & Cooke and Bassett & Bassett, his attorneys, and moves the court for an extension of time within which to file reply briefs herein, and the court being now fully advised in the premises, allows said motion.

Therefore it is considered and ordered by the court that the time within which to file reply briefs herein be, and the same is hereby, extended five days.

At a term of the appellate court begun and held at Ottawa on Tuesday, the seventh day of December, in the year of our Lord one thousand eight hundred and ninety-seven, within and for the second district of the State of Illinois.

Present : The Hon. John D. Crabtree, presiding justice ; Hon. Francis M. Wright, justice ; Hon. Dorrance Dibell, justice ; Christopher C. Duffy, clerk ; Charles J. Yockey, sheriff.

Be it remembered that, to wit, on the 17th day of December, A. D. 1897, certain proceedings were had and orders made and entered of record by said court, among which is the following, viz :



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JOHN McCaffrey

vs.

THE SCHULENBURG-BOECKLER LUMBER Com-  
pany, The Knapp, Stout & Co. Company ;  
Eugene C. Tittman and David Bronson,  
Assignees.

3198. 33. Appeal  
from Mercer.

On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error and being now sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid and in the rendition of the decree aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the decree of the circuit court of Mercer county in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the said circuit court of Mercer county with directions to enter a decree in conformity with the views expressed in the opinion of the court filed herewith in favor of McCaffrey in the sum of \$3,643.17, with interest thereon from November 13, 1894, at five per cent. per annum, and for such other and further proceedings as to law and justice shall appertain.

And it is further considered by the court that the said plaintiff in error recover of and from the said defendants in error his costs by him in this behalf expended, to be taxed, and that he have execution therefor except as against Eugene C. Tittman and David Bronson, which shall be paid in due course of law.

406

Be it remembered that, to wit, on the 29th day of December, A. D. 1897, certain proceedings were had and orders made and entered of record by said court, among which is the following, viz :

JOHN McCaffrey

vs.

THE SCHULENBURG-BOECKLER LUMBER Co.  
*et al.*

3198. 33. Appeal  
from Mercer.

Now, on this day, come the said appellees, Knapp, Stout & Co. Company, by Bassett & Bassett, their attorneys, and move the court for an appeal from the order and judgment of this court to the supreme court of the State of Illinois, that the amount of the bond to be given on such appeal be fixed, and the time within which the same shall be filed ; and the court, being now fully advised in the premises, finds that an appeal herein is a matter of right.

Therefore it is considered and ordered by the court that an appeal herein be, and the same is hereby, granted on petitioner filing a good and sufficient bond, conditioned as provided by law, in the penal sum of two hundred dollars (\$200.00), with security to be approved by the clerk of this court ; bond to be filed within twenty (20) days.

Be it remembered that afterwards, to wit, on the 7th day of January, A. D. 1898, there was filed in said clerk's office a certain appeal bond in said cause, which is in the words and figures following, viz :

Know all men by these presents that we, Knapp, Stout & Co. Company, a corporation in St. Louis, Missouri, with its headquarters at Menomie, Dunn Co., Wisconsin, and John H. Douglass and L. D.

Abbott, of the State of Illinois, are held and firmly bound  
407 unto John McCaffrey, of the State of Iowa, in the penal sum of two hundred dollars, lawful money of the United States ; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this thirteenth day of December, A. D. 1897.

The condition of the above obligation is such that whereas the said Knapp, Stout & Co. Company did on the sixteenth day of April, A. D. 1897, in the circuit court of Mercer county, in the State aforesaid, and of the March term thereof, A. D. 1897, recover a judgment against the said John McCaffrey for costs of suit, from which said judgment of the circuit court of Mercer county the said John McCaffrey prayed for and obtained an appeal to the appellate court within and for the second district of said State ; and whereas the said appellate court did on the 17th day of December, A. D. 1897, and at the December term thereof, A. D. 1897, reverse the judgment of the circuit court aforesaid, and did render judgment against the above bounden for costs of suit, with a mandate to the circuit court to enter a judgment against Knapp, Stout & Co. Company, from which order and judgment of the said appellate court the said Knapp, Stout & Co. Company has prayed for and obtained an appeal to the supreme court of the State of Illinois :

Now, therefore, if the said Knapp, Stout & Co. Company shall duly prosecute its said appeal with effect and, moreover, pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against it in case the said judgment shall be affirmed in said supreme court, then the above obligation to  
408 be void ; otherwise to remain in full force and virtue.

THE KNAPP, STOUT & CO. COMPANY.	[SEAL.]
JOHN H. DOUGLASS, <i>Treas.</i>	[SEAL.]
JOHN H. DOUGLASS.	[SEAL.]
L. D. ABBOTT.	[SEAL.]

Endorsed : Approved and ordered filed this 7th day of January, A. D. 1898. C. C. Duffy, clerk. Filed January 7, 1898. C. C. Duffy, clerk.

## Appellate Court of Illinois, Second District.

CLERK'S OFFICE, OTTAWA, 1, 18, 1898.

Bassett &amp; Bassett to C. C. Duffy, clerk, Dr.

To copy of trans. in McCaffrey v. S. B. Lum. Co., 3198. . . . . \$5.50

Received payment, C. C. DUFFY, *Clerk*.

Return this statement for reference.

C. C. DUFFY, *Clerk*.STATE OF ILLINOIS, }  
Second District, } ss :

I, C. C. Duffy, clerk of the appellate court in and for said district of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the record and proceedings of the said appellate court in the above-entitled cause of record in my office.

[SEAL.] In testimony whereof I hereunto set my hand and affix the seal of the said appellate court, at Ottawa, this 409 18th day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

C. C. DUFFY,  
*Clerk of the Appellate Court.*

\$5.50 paid by Knapp, Stout &amp; Co.

In the Supreme Court of the State of Illinois, February Term, A. D.  
1898.

THE KNAPP, STOUT & CO. COMPANY,	}	Appeal from Appellate Court, Second District.
a Corporation, Appellant,		
vs.		
JOHN McCAFFREY, Appellee.		

And now comes the said Knapp, Stout & Co. Company, appellant herein, by Bassett & Bassett and Wise & McNulty, its attorneys, and says that in the proceedings aforesaid there is manifest error in the decision of the appellate court, in this, to wit:

First. The appellate court erred in reversing the decree of the circuit court.

Second. The appellate court erred in holding that there was a lien on the half raft in favor of the complainant in the circuit court.

Third. The appellate court erred in deciding that a court of equity had jurisdiction to enforce a lien in this case.

Fourth. The appellate court erred in directing the circuit court to enter a decree against the Knapp, Stout and Co. Company for three thousand six hundred and forty-three dollars and seventeen cents (\$3,643.17) or for any amount.



KNAPP, STOUT & COMPANY } No. 110. Appeal from Appellate  
                                   v.                         } Court of Illinois, Second District.  
 JOHN McCAFFREY. }

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error, therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant his costs by him in this behalf expended, and that he have execution therefor.

413      At a supreme court, begun and held at Springfield, on Tuesday, the 7th day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jessie J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk*.

Be it remembered that afterwards, to wit, on the seventeenth day of February, 1899, the opinion of the court was filed in the words and figures following, to wit:

KNAPP, STOUT & Co. } No. 110. Error to —. Appeal from Second  
                                   v.                         } District.  
 JOHN McCAFFREY. }

414      Docket No. 147, Agenda 43, northern div., Feb., '98.

KNAPP, STOUT & Co. COMPANY }  
                                   v.                         }  
 JOHN McCAFFREY. }

This was a bill in equity, filed in the circuit court of Mercer county by John McCaffrey, against the Schulenburg & Boeckeler Lumber Company and its assignees, and Knapp, Stout & Co. Company. Said corporations, for brevity, will here be called the Schulenburg Company and the Knapp Company. The object of the bill was to establish and enforce a bailee's lien upon a half raft of lumber at Boston bay, in Mercer county. The Knapp Company applied for and obtained an interlocutory decree, under which it gave bond and took the raft away. Answers were filed and repli-

cations thereto, and there was a hearing, and a decree dismissing the bill without prejudice, from which decree McCaffrey prosecuted an appeal to the appellate court. The appellate court reversed the decree of the circuit court and remanded the cause, with directions to enter a decree for a particular amount, as hereinafter stated.

On April 6, 1893, the Schulenburg Company and McCaffrey entered into a written agreement, by which (among other things) McCaffrey was to tow rafts of lumber from Stillwater to St. Louis for the Schulenburg Company, at certain prices therein fixed. There were many provisions of the contract not material to the present suit. McCaffrey towed many rafts for the company under said contract, and prior to October 6, 1894, the Schulenburg Company was largely indebted to McCaffrey for towing charges under said contract, which indebtedness is still unpaid. On October 13, 1896, McCaffrey's steamer, the Robert Dodds, (George Tromley, Jr., master,) left Stillwater with raft No. 10 of that year. The water was very low in the river and the progress of the raft was slow. The Schulenburg Company was in haste for its lumber, and pursuant to its directions the raft was divided by Tromley at Boston bay, and one-half was taken into the bay and there fastened and left in charge in the manner hereinafter stated, and the other half of the raft was taken to St. Louis and there delivered on November 2. The Schulenburg Company then paid the clerk of the boat \$1,250, without any directions as to its application, and McCaffrey applied it on the amount due him for towage of other rafts. The company then directed

415 Tromley to leave the half raft in Boston bay till spring, and delivered to him two additional lines to be used by him in making the raft more secure to the shore. The steamer reached Boston bay again on the morning of November 4, and the captain and crew on that day did certain things and left certain directions for the care of the half raft during the winter, which will be hereinafter stated. On the next day, November 5, at St. Louis, the Schulenburg Company sold said half raft to the Knapp Company for \$15,000, part in cash and part in a note due in four months, which was afterwards paid. On November 9 the Schulenburg Company made a voluntary assignment at St. Louis for the benefit of creditors. McCaffrey offered, both to the Schulenburg Company and to the Knapp Company, to tow said half raft to St. Louis under his contract, but the Knapp Company forbade his doing so, and informed him that it did its own towing. Finally McCaffrey, claiming still to be in possession of the half raft but believing that the Knapp Company was about to seek to take it from him by force, filed this bill, with the results already stated.

*Per Curiam:*

The opinion of the appellate court, as delivered by Mr. Justice Dibell, is, in part, as follows:

"The first question is, whether McCaffrey had a lien on the raft for his towing charges while the raft was in his possession. He had no lien by contract, for that instrument gave him none. A common carrier has, at common law, a specific lien upon the goods car-

ried, for his charges in transporting them, (13 Am. & Eng. Ency. of Law, 580,) and our statute (chap. 141) provides a means for enforcing it; but the weight of authority is that the owner of a steamboat engaged in the business of towing is not a common carrier, (Caton v. Rumney, 13 Wend., 387; Alexander v. Greene, 3 Hill, 9; Story on Bailments, sec. 496; Anderson's Law Dic., title 'Towboat;,' and much more is this so where, as here, he tows only for a single party. Stephen thus defines bailment: 'Bailment is the delivery of goods for some purpose, upon a contract, express or implied, that after the purpose has been fulfilled they shall be redelivered to the bailor, or otherwise dealt with according to his directions, or kept till he reclaims them.' (3 Am. & Eng. Ency. of Law, 2d ed., 733.) The word 'goods' in this and other like definitions obviously includes every article of the movable and tangible personal property. Among the purposes included within said definition of bailment is 'the hiring of the carriage of goods from one place to another for a stipulated or implied reward.' (Cowen's Treatise, 3d ed., 67; Story on Bailments, sec. 8.) There is nothing in this definition which excludes carriage of goods by water, and that such carriage comes within the principles of bailment is evident from Story on Bailments, secs. 496, 501, 504, and elsewhere. The carrier of goods has a lien thereon for his hire while he retains possession. (Story on Bailments, sec. 588.) This lien 'extends to all the goods delivered under one contract, although they be delivered in different parcels and at different times, and the bailee may detain any portion of them as a lien upon the whole,' even if he has delivered a part. 3 Am. & Eng. Ency. of Law, 2d ed., 760; Morgan v. Congdon, 4 N. Y., 552; Schmidt v. Blood, 9 Wend., 268; McFarland v. Wheeler, 26 *id.*, 467; Potts v. Railroad Co., 131 Mass., 455; Blake v. Nicholson, 3 Maule & S., 167; Chase v. Westmore, 5 *id.*, 180.

"Up to the time the whole raft reached Boston bay McCaffrey had a lien on each piece and parcel of lumber thereon for the carriage of the entire raft. The Schulenburg Company could not change or defeat that lien by directing him to divide the raft and bring half to St. Louis first. That direction was solely for its benefit. McCaffrey was ready and willing and offered to tow the half raft to St. Louis but was refused permission, and his right to do so was denied by the purchaser. This excused, and, indeed, prevented, his further performance. Therefore McCaffrey had a common-law bailee's lien on said half raft while in his possession at Boston bay for the towing of the entire raft at the contract price. His claim is for \$3,795.82. This sum we consider established by the proofs, \* \* \* for which, in our opinion, complainant had a bailee's lien on said half raft while he retained possession, and which would bear interest at five per cent. per annum from the date when the Knapp Company forbade McCaffrey to tow said half raft to St. Louis under his contract, which was November 12 or 13, 1894.

"It is suggested there is no lien because the practice had been not to pay till after delivery. But the contract does not provide when payments shall be made, and the price agreed was therefore due



when the service was rendered. Delay in enforcing payment for other rafts, which was merely of favor to the owner, could not defeat the lien. McCaffrey filed a claim against the Schulenburg Company, insolvent, for nearly \$25,000, and included this claim therein, and it is argued he thereby waived his lien. But in the written claim filed he expressly asserted a lien on said half raft for these charges, and states therein that he retained the right to enforce said lien. It is not shown that said claim was ever allowed or put in judgment, and it has not been paid. The mere filing of a claim thus guarded did not release the lien.

"The main question of fact in dispute is whether McCaffrey had possession of said half raft after he took it into Boston bay. \* \* \* We are of opinion McCaffrey had possession of the half raft till he surrendered it under the order of the court. He therefore had everything necessary to entitle him to a bailee's lien.

"McCaffrey has no adequate remedy at law. \* \* \* He had a right to hold the raft till his charges were paid. But his possession and his lien were both disputed. The Knapp Company obviously intended to take the raft away. As it was upon the water and near the channel of the river the ropes could be cut or removed and the raft taken away by a steamer at any time, unless guarded by a force of men at much expense and in a way likely to lead to a breach of the peace. Can a bailee in possession in such case have the aid of a court of equity, or must he be left either to maintain a small army at his own expense or to let his rights be taken away from him and then sue the tortfeasor at law? McCaffrey's position was in many respects similar to that of a pledgee or chattel mortgagee, and their right to foreclose their lien in equity is well established. (*Dupuy v. Gibson*, 36 Ill., 197; *Cushman v. Hayes*, 46 *id.*, 145; *Barchard v. Kohn*, 157 *id.*, 579; *Carter v. Stevens*, 3 Denio, 33; *Story on Bailments*, sec. 348; *Pomeroy's Eq. Jur.*, secs. 164, 1231.) The right to enforce a bailee's lien in equity comports with equitable principles. 1 *Pomeroy's Eq. Jur.* (sec. 112) mentions 'those cases in which the relief is not a general pecuniary judgment, but is a decree of money to be obtained and paid out of some particular fund or funds. The equitable remedies of this species are many in number and various in their external forms and incidents. They assume that the creditor has, either by operation of law, or from contract, or from some acts or omissions of the debtor, a lien, charge or incumbrance upon some fund or funds belonging to the latter, either land, chattels, things in action, or even money; and the form of the remedy requires that this lien or charge should be established and then enforced, and the amount due obtained by a sale, total or partial, of the fund.' In section 171 the same author classifies 'those remedies which establish and enforce liens and charges on property rather than rights and interests in property, \* \* \* by means of a judicial sale of the property itself which is affected by the lien, and a distribution of its proceeds \* \* \* until they satisfy the claim secured by the lien.' 2 *Kent's Com.* (642) says: 'A lien is in many cases like a distress at common law, and gives a party detaining the chattel the right to



hold it as a pledge or security for the debt, but not to sell it. \* \* \* I presume that satisfaction from a lien may be enforced by a bill in chancery.' Cowen's Treatise (3d ed., 337), after stating that a party detaining a chattel by virtue of his lien thereon for charges has a right to hold it but not to sell it, says: 'It is supposed that the only way in which satisfaction from a lien can be enforced is by a bill in chancery.' In 2 Redfield on Railways (160, sec. 22, par 14) that author says: 'Neither the carrier, nor any other bailee having a lien, can sell the goods at common law in satisfaction of the lien. The appropriate remedy in such case is in equity.' 2 Rorer on Railroads (1268), discussing the carrier's lien on freight for charges, and that such lien only gives the right to retain and not to sell the property, further says: 'If the carrier will sell, other than when the statute allows it, he may find a remedy and means of selling by judicial proceedings to enforce the lien.' In *Gilchrist v. Railroad Co.*, 58 Fed. Rep., 708, the United States circuit court for Montana sustained a bill to enforce a lien. The relief was, in part, based upon the fact that the plaintiff had a lien and had a right to have it enforced, but had no plain, speedy and adequate remedy at law. (*Fox v. McGregor*, 11 Barb, 41.) 2 Jones on Liens (sec. 1038) states the contrary rule, that a court of equity has no jurisdiction to enforce a common-law lien by a sale merely because there is no remedy at law, or because the retaining of possession under a passive lien involves expense or inconvenience. That author, in section 1041, recognizes Illinois as an exception, and as a State in which a court of equity has jurisdiction to enforce liens upon personal property generally, citing *Cairo and Vincennes Railroad Co. v. Fackney*, 78 Ill., 116. The court there said: 'Liens 419 are enforceable in equity unless the law has provided for another mode. This is true of vendors' liens, equitable and other mortgages, and all statutory liens, so far as they now occur to us, except in all cases where the lien is in the nature of a pledge and possession accompanies the lien. If defendant in error had a lien he should have resorted to equity for its enforcement.' The general principle and the reason there stated sustain the present suit, while the exception suggested by the court seems against it. See, also, *Cushman v. Hayes*, 46 Ill., 145.

"But if a mere desire on the part of the complainant to collect his debt would not give jurisdiction to a court of equity to order the property held under the lien sold to pay it, there seems here to be other sufficient reasons for applying to equity. The Schulenburg Company claimed to have sold to the Knapp Company, and the latter claimed to have bought. Almost immediately after the alleged sale the Schulenburg Company made an assignment for the benefit of creditors. The pleadings show the assignees do not admit the sale from the Schulenburg Company to the Knapp Company, but deny it in general terms. McCaffrey had no other effective way of determining with whom he might safely deal. Both the Schulenburg Company and the Knapp Company have always denied that McCaffrey had a lien and that he ever had possession after the raft was laid up in Boston bay. Both said defendants

claim that the raft was by McCaffrey delivered to the Schulenburg Company when it was put into that harbor; that the Schulenburg Company thereafter remained in possession of the raft till it sold to the Knapp Company, and that it then put the Knapp Company in possession, and that the latter thereafter remained in possession. The Knapp Company declared, in its answer, its right and purpose to remove the raft, and it declared the same thing to McCaffrey before the bill was filed. The bill stated that the raft was so near the channel that when the annual June rise in the Mississippi should take place it would be likely to break up and destroy the raft unless moved further inland, and that his right to move it was in dispute, and the answer of the Knapp Company makes it clear he could not have so removed it without resistance. It was his duty to protect this property while in his possession. It was valuable, and he would be responsible for any injury which could be traced to his neglect. He needed the help of a court of equity to keep him undisturbed in the control and care of the property. Such assistance could be afforded him under his prayer for general relief. It is plain from the pleadings that a large force of men was necessary to enable McCaffrey to retain the possession he had and which he was entitled to retain. We are of opinion that under all these circumstances it was proper for him to resort to a court of equity and bring all parties in interest before the court to have the questions of his possession and lien and the validity of the sale to the Knapp Company, and the rights of the assignees, determined by a decree binding upon them all.

"It is said the circuit court of Mercer county had no jurisdiction because this was a maritime lien, and exclusive jurisdiction in such case is by act of Congress vested in the courts of the United States sitting in admiralty. Can the Knapp Company now raise that question in the condition of this record? On April 2, 1895, and before answer, the Knapp Company filed a written petition in this case, wherein it asked the circuit court either to require McCaffrey to give a bond, with sureties in the sum of \$25,000, conditioned to pay the Knapp Company whatever damage it might suffer if the case should be decided against McCaffrey, or else that, upon the said Knapp Company giving a bond in the sum of \$6,000 to pay McCaffrey any lien which might be established in his favor, 'then that this defendant shall have a right to take possession of said raft and remove the same to St. Louis, Missouri.' As a reason the Knapp Company added: 'The defendant being in a court of equity, and believing that it is but right that this motion should be granted, prays the court to grant the same.' Thereupon the court heard said petition, and by consent of the parties ordered that the Knapp Company file a bond in the penal sum of \$6,000, with sureties, conditioned to pay 'McCaffrey all sums of money for which he has a lien upon the property described herein,' and that upon the filing and approval of such bond McCaffrey 'shall surrender the property above described to Knapp, Stout & Co. Company.' Bond was so given and the Knapp Company took the raft away. The order provided with great care that no one should be prejudiced

by the order—that it should not be construed to be a confession of anything by anybody, nor an admission that the court had jurisdiction, etc. Nevertheless, the order was  
 421 much to the detriment of McCaffrey and took from him important rights. It is very earnestly argued here by the defendants that if McCaffrey had any lien it was but a passive lien entitling him to retain possession of the raft till his charges were paid, but for which he had no other remedy. But if so, his passive lien was destroyed under this order. He no longer had possession. The raft was gone. It is a fair presumption that when the Knapp Company got the raft to St. Louis the lumber was distributed in its yards and no longer traceable, and that it was impossible for the complainant to repossess himself of the raft. It is also strongly urged here by defendants that if any tribunal can enforce McCaffrey's lien it can only be done by a suit *in rem* in admiralty. But the *res*,—the thing,—is gone, is dispersed, and McCaffrey's remedy in admiralty, if he ever had one, has been taken away from him under this order. True, McCaffrey consented to the order; but he was claiming a court of equity had jurisdiction, and it was in harmony with his position that the court should assume to dispose of the raft. The filing of the bill had not put the court in possession of the raft. It was the defendant, The Knapp Company, that appealed to the court to permit it to give a bond and take the raft away, and it expressly based its petition upon the ground that it was in a court of equity, and that it was equitable that the court should accept a bond and order McCaffrey to surrender the raft to it. The Knapp Company asked and obtained this relief from a court of equity, and practically destroyed McCaffrey's security unless his rights can be enforced in this cause. It is also true that in its motion the Knapp Company denied the jurisdiction of the court, and the court in its order provided that the order should not be construed as an admission of jurisdiction; but this only puts the Knapp Company in the position of denying the court's jurisdiction in one breath and in the next breath asking the court to take jurisdiction and give equitable relief in a material matter. Having asked and obtained the exercise of jurisdiction its denial of jurisdiction at the same time was idle. We think the Knapp Company should be estopped by that action from questioning the jurisdiction of the circuit court of Mercer county. As the proof shows a valid sale by the Schulenburg Company to the Knapp Company before the assignment, the  
 422 Schulenburg Company and its assignees have no further interest in the raft, and as the Knapp Company is estopped from questioning the jurisdiction of the court below, that tribunal should have given McCaffrey a decree.

“Does he who, in the performance of a contract, renders services in towing a floating raft of lumber on a navigable river have a maritime lien thereon for such services. Is such a raft a proper subject for admiralty jurisdiction? Upon these questions the authorities are in conflict. The following tend to support the contention that such a raft is not within the jurisdiction of admiralty: *Tome v. Four Cribs of Lumber*, Taney's Dec., 533; *The W. H. Clark*,

5 Biss., 295; Jones v. Coal Barges (Grier, J.), 3 Wall., Jr., 53; Raft of Cypress Logs, 1 Flippin, 543; Raft of Timber, 2 Robinson's Adm., 251; Henry on Admiralty Jur., sec. 52. See, also, Gastrel v. Cypress Raft, 2 Woods, 213; The Hendrick Hudson, 3 Benedict, 419. The contrary doctrine, that a raft of lumber may in a proper case come within the jurisdiction of courts of admiralty, is supported by the following: United States v. Raft of Timber, 13 Fed. Rep., 796; Muntz v. Raft of Timber, 15 *id.*, 555; The F. & P. M. No. 2, 33 *id.*, 511; Seabrook v. Raft of Ties, 40 *id.*, 596; Salvor Wrecking Co. v. Sectional Dock Co., 3 Cent. L. J., 640; Raft of Spars, 1 Abb. Adm., 485; Fifty Thousand Feet of Lumber, 2 Low., 64. See, also, Nicholson v. Chapman, 2 H. Black, 254, and an *obiter dictum* in Rock Island Bridge, 6 Wall., 213. Perhaps the sounder argument supports the position that such a raft on a navigable river is a proper subject of admiralty jurisdiction, but where the question is left in so much doubt by the conflicting decisions of the various courts of admiralty, and the opposite view is supported by so strong authority as Chief Justice Taney and Justice Grier of the United States Supreme Court, the State courts should hesitate to renounce jurisdiction in a case like this, where no proceeding affecting the rights of the parties has ever been instituted in any court of admiralty.

"The jurisdiction of the courts of the United States to administer relief by proceedings *in rem* in admiralty is unquestionably exclusive. Such proceeding, however, is against the property, only. 'The distinguishing and characteristic feature of such suit is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly. It is this dominion of a suit in admiralty over the vessel or thing itself which gives to the title made under its decree validity against  
423 all the world.' (The Moses Taylor, 4 Wall., 411.) No person is a defendant in such a suit. Parties who have real or possible interests determine for themselves whether they will appear and protect their interests. When a sale is made in such a proceeding it is good against the whole world. No such remedy was sought here. This was a suit against persons. No one would be bound by a decree herein except those made parties. A sale, though purporting to be of the property, would really be only a sale of the interests of the defendants therein. A personal decree for the deficiency, if any, might follow. The equitable circumstances before mentioned, growing out of the sale and assignment, the denial of possession, the intention to seize the property, the duty of McCaffrey to protect it from a rise of the river and the obstacles to so doing put in his way by the Knapp Company, all furnish ground for equitable cognizance. We cannot hold that because a proceeding against the raft in admiralty might afford some relief, therefore a court of equity must keep its hands off if equitable circumstances exist which justify its granting relief on well-established equitable principles against persons made defendants. Moreover, if the case had any likeness to a suit *in rem* in admiralty when it was started, it lost that distinctive character when

the Knapp Company, at its own request, took the raft and left a personal bond in its place. Thereafter the suit was wholly *in personam* (Johnson v. Chicago and Pacific Elevator Co., 119 U. S., 388; Gindele v. Corrigan, 28 Ill. App., 476; 129 Ill., 582.) Though the cases cited were at law, yet they are in point as to the effect of giving bond and taking away the property. By the action of the Knapp Company the raft was withdrawn from the suit, and a suit relative to liability upon a personal obligation was substituted therefor. The suit, as so changed by the act of the Knapp Company, was not within the jurisdiction of a court of admiralty.

"For the reasons stated the decree of the court below will be reversed and the cause remanded to that court, with directions to enter a decree in conformity with the views herein expressed in favor of McCaffrey in the sum of \$3,643.17, with interest thereon from November 13, 1894, at five per cent. per annum."

We concur in the views above expressed and adopt the same as those of this court. Accordingly, the judgment of the appellate court is affirmed.

Judgment affirmed.

424 STATE OF ILLINOIS, }  
Supreme Court, } ss :

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, Mar. 31st, 1899.

C. MAMER,  
Clerk of the Supreme Court.

425 STATE OF ILLINOIS :

In the Supreme Court of Illinois, Northern Grand Division, February Term, A. D. 1899.

THE KNAPP, STOUT & CO. COMPANY,	}	Petition for Writ of Error.
Appellant,		
vs.		
JOHN MCCAFFREY, Appellee.		

To the Honorable Joseph N. Carter, chief justice of the supreme court of the State of Illinois :

Your petitioner, The Knapp, Stout & Co. Company, a corporation, appellant in the above-entitled cause, respectfully represents unto your honor that on the 15th day of February, A. D. 1895, John McCaffrey filed in the circuit court of Mercer county, State of Illinois, a bill in chancery against The Schulenburg-Boeckler

Lumber Company, Eugene E. Tittman, David Bronson, and The Knapp, Stout & Co. Company, your petitioner. The bill averred, in short, that on April 6th, 1893, the Schulenburg-Boeckler Lumber Company made a written contract with the complainant, by which the complainant was to receive all rafts and lumber of the Schulenburg-Boeckler Lumber Company at Stillwater, Minnesota, and to tow the same to the landing of said Schulenburg-Boeckler Lumber Company at St. Louis, Missouri; that complainant was to receive one dollar and twelve and one-half cents (\$1.125) per thousand feet for all rafts of lumber so towed; that said Schulenburg-Boeckler Lumber Company was to give complainant McCaffrey to tow 75,000,000 feet during the three years succeeding the date of the contract, and all over that amount if they had any more  
 426 to tow from Stillwater to St. Louis; that complainant had, in pursuance of the contract, towed all the lumber given him to tow by the said Schulenburg-Boeckler Lumber Company; that there was delivered to him under this contract on the 13th day of October, 1894, at Stillwater, Minnesota, a raft containing:

Lumber.....	3,113,100 feet.
Grab plank in raft.....	82,944 feet.
Timber, deck-loading.....	113,970 feet.
Loose lumber, deck-loaded.....	11,300 feet.

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3,321,314 feet.

That the complainant towed the raft to Boston bay, in Mercer county, Illinois, November 4th, 1894, where the raft was divided, one half being towed to St. Louis, and the other half raft was left tied with the lines of the complainant to the shore of said Boston bay; that the complainant placed said half raft in charge of a watchman, and said half raft is now in the possession of the complainant; that on November 8th, 1894, the Schulenburg-Boeckler Lumber Company made a voluntary assignment to Eugene E. Tittman and David Bronson; that on November 12th, 1894, complainant learned of the assignment and went to St. Louis, called on the Schulenburg-Boeckler Lumber Company, and presented his claim for towage of the raft, and offered to tow it to St. Louis. The Schulenburg-Boeckler Lumber Company informed complainant that it had sold the raft to the Knapp, Stout & Co. Company, and was informed by said company that it had bought the raft. The complainant then offered to tow the raft to St. Louis for said Knapp, Stout & Co. Company, which company declined the offer; that the charges of complainant for the towage of the raft according to the contract are \$1,086.48, for which charge the complainant has a lien; that the estate of the Schulenburg-Boeckler Lumber Com-  
 427 pany will pay less than fifty per cent. of its liabilities; that the Knapp, Stout & Co. Company threatened to deprive complainant of the raft by force. The prayer of the bill is that complainant may be decreed to have a first lien on said half raft for the towage, the defendants be decreed to pay the amount due complainant by an early day to be fixed by the court, and that in



default thereof the said raft be sold by order of court to pay the amount due complainant and costs, and in case of sale the purchaser to have an absolute title free from all claims from any of the defendants, and for general relief. Separate answers were filed by each of the defendants, and in each of said answers it was expressly denied that the circuit court of Mercer county, Illinois, had jurisdiction of the suit, and avers the jurisdiction vested exclusively in the admiralty courts of the United States; that in answering the bill the defendants do not waive the right to claim that the court has no jurisdiction. In their respective answers each of the defendants fully answer the bill, and in all of them it is alleged that The Knapp, Stout & Co. Company, your petitioner, was the owner of the lumber and had the possession of the same. The circuit court of Mercer county decreed that the contract of towage was a maritime contract, and enforceable only in the admiralty courts of the United States, and that the circuit court of Mercer county did not have any jurisdiction, and dismissed the bill.

The complainant appealed to the appellate court for the second district of the State of Illinois, and the case was submitted to that court at the May term, A. D. 1897. At the December term, A. D. 1897, the appellate court reversed the judgment rendered by the circuit court of Mercer county, and held that that court had 428 jurisdiction, and entered a mandatory order to the circuit court to enter a decree against your petitioner, The Knapp, Stout & Co. Company, for \$3643.17, with five per cent. interest from November 13th, 1894. Your petitioner, The Knapp, Stout & Co. Company, perfected an appeal to the supreme court of the State of Illinois, and the case was submitted to the said supreme court at the February term, A. D. 1898, and at its February term, A. D. 1899, the said supreme court affirmed the judgment and order made in this case by the said appellate court.

Your petitioner represents unto this honorable court there is necessarily involved in this suit, as appears in the allegations in the bill, as well as by the statements in the answer filed by your petitioner in said suit, a Federal question in this: this is a suit to enforce a lien for the towage of a raft on the Mississippi river. The facts show that the raft was towed on the Mississippi river from Stillwater, Minnesota, to Boston bay, Illinois. The jurisdiction of the United States admiralty courts extends to the entire navigable system of the United States. Your petitioner claims that the contract in this case is a maritime contract, and the lien for the towage can be enforced only in the United States admiralty courts, which courts have exclusive jurisdiction of the controversy involved in this suit; that the circuit court of Mercer county, Illinois, had no jurisdiction of the suit as it decided, and that the judgment and order subsequently entered in this suit in the appellate court and affirmed in the supreme court are all void for want of jurisdiction, the only court having jurisdiction being the admiralty courts of the United States.

And this appellant and your petitioner herein respectfully petitions this honorable court that on account of the Federal question

here presented in and by this case that this honorable court  
 429 award to it a writ of error commanding the clerk of this  
 court, under his seal, to distinctly and openly send the record  
 and proceedings in this case, with all things concerning the same,  
 unto the honorable the Supreme Court of the United States, so that  
 the alleged errors, as aforesaid, may be inspected, and that any and  
 all errors therein may be corrected by the said Supreme Court of  
 the United States.

Your petitioner further represents that it files with its petition  
 and as part thereof an assignment of errors in this cause, as required  
 by law, and your petitioner further prays that this court make an  
 order allowing your petitioner to give a bond in said cause in such  
 sum as this court may fix and deem right, and that the giving of  
 such bond shall act as a supersedeas herein.

KNAPP, STOUT & CO. COMPANY,  
 Per WISE & McNULTY, *Its Attorneys.*

Filed March 15, 1899.

C. MAMER, *Clerk.*

430 STATE OF ILLINOIS:

In the Supreme Court, Northern Grand Division, February Term,  
 A. D. 1899.

THE KNAPP, STOUT & CO. COMPANY,	}	Order for Writ of Error.
Appellant,		
<i>vs.</i>		
JOHN McCaffrey, Appellee.		

And now, on this day, came The Knapp, Stout & Co. Company,  
 appellant in the above-entitled suit, and presents to the — Joseph  
 N. Carter, chief justice of the supreme court of the State of Illinois,  
 its petition that an order may be made in the above-entitled cause  
 for a writ of error in said suit to the Supreme Court of the United  
 States for the reason that there is a Federal question involved in  
 said suit, as set forth in said petition.

And the court, having examined said petition and being satisfied  
 that in the record and proceedings in said suit there is presented  
 and involved a Federal question which entitles the petitioner, the  
 appellant, in this suit to a writ of error to the Supreme Court of the  
 United States:

It is therefore ordered and adjudged that the prayer of said peti-  
 tion be granted; that a writ of error to the Supreme Court of the  
 United States be awarded to the petitioner herein, and the clerk of  
 this court is hereby ordered and commanded, under the seal of this  
 court, to send the record and proceedings in this case unto the  
 honorable the Supreme Court of the United States for its inspection  
 and to correct any error it may find therein.

It is further ordered by the court that upon the petitioner filing



431 with the clerk of this court an appeal bond in the sum of seven thousand dollars, with Geo. B. Abbott, L. D. Abbott, and H. D. Sexton as sureties thereon, the said writ of error shall then be and act as a supersedeas in this suit.

JOSEPH N. CARTER,  
*Chief Justice of the Supreme Court of Illinois.*

Filed March 15, 1899.  
C. MAMER, *Clerk.*

432 Supreme Court of the State of Illinois.

THE KNAPP, STOUT & CO. COMPANY, Appellant, }  
vs.  
JOHN MCCAFFREY, Appellee. }

Know all men by these presents that we, the Knapp, Stout & Co. Company, a corporation, and Geo. B. Abbott, L. D. Abbott, and H. D. Sexton, on the city of East St. Louis, State of Illinois, are held and firmly bound unto the above-named John McCaffrey in the sum of seven thousand dollars (7,000), to be paid to the said John McCaffrey; for the payment of which, well and truly to be made, the Knapp, Stout & Co. Company binds itself, its successors and assigns, and the said Geo. B. Abbott, L. D. Abbott, and H. D. Sexton bind ourselves and each of us, our and each of our heirs, executors, and administrators jointly, severally, and firmly, by these presents.

Sealed with our seals and dated the sixth day of March, A. D. 1899.

Whereas the above-named The Knapp, Stout & Co. Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the supreme court of the State of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named The Knapp, Stout & Co. Company shall prosecute said appeal to effect and answer all damages and costs if it fail to make said appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

THE KNAPP, STOUT & CO.  
COMPANY.

[SEAL.]

H. L. STOUT, *Pres.*  
L. S. TAITER, *Sec'y.*  
GEO. B. ABBOTT.  
L. D. ABBOTT.  
H. D. SEXTON.

[SEAL.]  
[SEAL.]  
[SEAL.]  
[SEAL.]  
[SEAL.]

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Taken and approved by me this 11th day of March, A. D. 1899.

JOSEPH N. CARTER,  
*Chief Justice of the Supreme Court of Illinois.*

Endorsed: Filed Mar. 15, 1899. C. Mamer, clerk of supreme court.

434 STATE OF ILLINOIS, } ss :  
*County of St. Clair,*

Henry D. Sexton, of the city of East St. Louis, St. Clair county, Illinois, being duly sworn, states that he is now and has been for years a resident of the city of East St. Louis, St. Clair county, and State of Illinois; that he has signed the appeal bond in the suit of Knapp, Stout & Co. Co. *vs.* John McCaffrey, being an appeal in said suit from the supreme court of the State of Illinois to the Supreme Court of the United States; that he is now worth more than the sum of twenty-five thousand dollars after the payment of all debts and exemptions allowed by the State of Illinois.

H. D. SEXTON.

Subscribed and sworn to before me this 9th day of March, A. D. 1899.

[SEAL.]

C. A. COMBS,  
*Notary Public.*

435 STATE OF ILLINOIS, } ss :  
*County of St. Clair,*

George B. Abbott, of the city of East St. Louis, St. Clair county, Illinois, being duly sworn, states that he is now and has been for years a resident of the city of East St. Louis, St. Clair county, and State of Illinois; that he has signed the appeal bond in the suit of Knapp, Stout & Co. Co. *vs.* John McCaffrey, being an appeal in said suit from the supreme court of the State of Illinois to the Supreme Court of the United States; that he is now worth more than the sum of fifteen thousand dollars after the payment of all debts and exemptions allowed by the State of Illinois.

GEO. B. ABBOTT.

Subscribed and sworn to before me this 9th day of March, A. D. 1899.

[SEAL.]

C. A. COMBS,  
*Notary Public.*

Endorsed on cover: File No., 17,369. Illinois supreme court. Term No., 263. The Knapp, Stout & Co. Company, plaintiff in error, *vs.* John McCaffrey. Filed April 15th, 1899.



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*No. 10*  
*By. of [illegible]*  

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*Sept. 23, 1900*  
**SUPREME COURT OF THE UNITED STATES**

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OCTOBER TERM, 1900.

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**THE KNAPP, STOUT & CO. COM-  
PANY,**

vs.

*Plaintiff in Error.*

**JOHN MACIAFFREY,**

*Defendant in Error.*

} No. 22.

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IN ERROR TO THE SUPREME COURT OF THE STATE  
OF ILLINOIS.

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STATEMENT, BRIEF AND ARGUMENT OF C. F. WHELAN FOR  
PLAINTIFF IN ERROR.

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St. Louis Law Printing Co., 211-213 Locust St. Phone: Main 10125

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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1899.

THE KNAPP, STOUT & CO. COM-  
PANY,

*Plaintiff in Error,*

vs.

JOHN McCAFFREY,

*Defendant in Error.*

No. 263.

**STATEMENT.**

On the sixth day of April, 1893, John McCaffrey, of Davenport, Iowa, made a written contract with the Schulenburg & Boeckeler Lumber Company, a corporation, formed under the laws of the State of Missouri, and doing a lumber business there, and having large lumber interests in the State of Minnesota. (Printed Transcript of Rec., p. 56.) In the contract it is stated that McCaffrey, having purchased of the Schulenburg & Boeckeler Lumber Company three steamboats (tow boats), for \$17,500, it was agreed that McCaffrey was to tow all the rafted lumber to St. Louis, Missouri, which the said lumber company would deliver to him at or below Stillwater, Minnesota. The lumber was to be delivered in St. Louis in quantities not

exceeding a half raft at a time. McCaffrey was to be paid for towing from Stillwater to St. Louis \$1.12½ per thousand feet, board measure, for the lumber contained in the raft.

The lumber company was to give McCaffrey the towing of 75,000,000 feet during the three years succeeding the date of the contract, and all over that amount—if they had any more to tow—from Stillwater to St. Louis.

On the 13th of October, 1894, there was delivered to McCaffrey's steamer, Robert Dodds, at Stillwater, Minnesota, a raft called raft No. 10. The river being low and navigation difficult, McCaffrey was instructed to divide the raft, to bring one-half to St. Louis, and lay up the other half in some safe harbor. In compliance with these instructions, the raft was, on October 20, 1894, divided at Boston Bay Harbor, in Mercer County, Illinois, and one-half was left there, and the other half was towed to St. Louis and delivered to the lumber company there on November 2d, 1894. The steamer, Robert Dodds, returned to Boston Bay harbor and laid up outside of the raft for the winter.

On November 5, 1894, the Schulenburg & Boeckeler Lumber Company sold the half raft No. 10 in Boston Bay Harbor to The Knapp, Stout & Co. Company for \$15,000—\$5,000 cash, and the company's note due in four months for \$10,000 (which was paid at maturity), and gave the Knapp, Stout & Co. Company a bill of sale for the lumber (Printed Transcript of Rec., p. 145), and wrote to their watchman who had charge of the raft, informing him of the sale. (Printed Transcript of Rec., p. 201.)

The Knapp, Stout & Co. Company is a corporation formed under the laws of Wisconsin, with its principal office at Menominee, Wisconsin, but does a large lumber business in St. Louis, Missouri. On the 6th of November, the Knapp, Stout & Co. Company wrote to the same watchman informing him they had purchased the lumber, and

desired him to take charge of the raft for them. (Printed Transcript of Rec., p. 173.)

On the 9th day of November, 1894, Schulenburg & Boeckeler Lumber Company made an assignment for the benefit of creditors to Eugene Tittman, of St. Louis, Missouri, and David Bronson, at Stillwater, Minnesota.

McCaffrey, on hearing of the assignment, went to St. Louis, saw Wm. Boeckeler, of the Schulenburg & Boeckeler Lumber Company, who informed him the half raft in Boston Bay Harbor had been sold and delivered to Knapp, Stout & Co. Company, who had paid for the same. McCaffrey then called on John H. Douglas, the manager of the Knapp, Stout & Co. Company in St. Louis, and wished to know if the information was true, and was informed it was. He then asked if they wished the raft towed to St. Louis, and was informed they did not; that they did their own towing. He claimed that he had not been fully paid for towing the raft. He was informed that the Knapp, Stout & Co. Company owned the raft, had paid for it, that it was their property, and they had a watchman in possession of it.

On the 19th of February, 1895, McCaffrey filed his bill in chancery in the Circuit Court of Mercer County, Illinois, making the Knapp, Stout & Co. Company, the Schulenburg & Boeckeler Lumber Company, and the assignees of the latter company, defendants, and in the bill he claimed a lien on half raft No. 10. The bill prayed that the defendants might be decreed to pay him the amount of the towage and charges and interest, and in default that the Court would direct the sale of so much of said half raft No. 10 as would satisfy the amount so due McCaffrey, with costs. The bill set out the contract made between Schulenburg & Boeckeler Lumber Company, and is an attempt to invoke the aid of a court of equity to foreclose the lien McCaffrey claimed for towing the raft.



McCaffrey claimed in his bill, which was sworn to, that the Knapp, Stout & Co. Company were threatening to take the raft away by force, and that there was great danger that the raft might be carried away by high water, and at the March Term, 1895, made a motion for the appointment of a receiver.

The Knapp, Stout & Co. Company then entered their appearance for the purpose of answering the motion for a receiver, and for no other purpose, in no way entering its general appearance, or admitting that the Court had jurisdiction over it, or the subject matter in controversy in said suit; but protesting that the Circuit Court had no jurisdiction thereof, and objected to the appointment of a receiver. And also made a cross motion that John McCaffrey, if he should continue to claim a lien on said raft, and the possession thereof, be required to file a bond in the court in the sum of \$25,000, with good security, conditioned that said McCaffrey should pay to Knapp, Stout & Co. Company whatever damage it might suffer in case the Circuit Court should decide that it had not jurisdiction, or that McCaffrey had no lien and no right to hold the raft. Among the reasons assigned was: That it appeared by the bill that the raft was in danger of destruction by the elements; that McCaffrey was not able to pay the damages if the raft should be destroyed; that the value of the raft was \$17,000 and that McCaffrey did not claim a lien for but \$5,000; that Knapp, Stout & Co. Company paid \$15,000 for the raft, in ignorance of any claim that McCaffrey might have for any lien, and after having been informed by the owners that McCaffrey was not in possession, and did not have any lien; that McCaffrey was not in possession of the raft when purchased by the Knapp, Stout & Co. Company, but that the raft was in the possession of the Schulenburg & Boeckeler Lumber Company by their agent, E. L. Willis. (Printed Transcript of Rec., p. 20.)

The Knapp, Stout & Co. Company offered to give security for a sum of \$6,000 if McCaffrey declined to give bond, with condition that defendant take the raft, and pay to McCaffrey the amount of any lien that may be decreed in his favor in this suit against said raft, and all costs of this suit, if McCaffrey is decreed herein to have a lien against said raft.

Upon the second day of April, 1895, the Court, by the consent of the parties, entered in said suit the following order:

"Upon consideration of such motion and cross motion, and by consent of parties, orders and adjudges that Knapp, Stout & Co. Company enter into a penal bond with penalty in the sum of six thousand dollars payable to complainant herein with two sufficient sureties; \* \* \* conditioned that if Knapp, Stout & Co. Company shall well and truly pay or cause to be paid to complainant, John McCaffrey, all sums of money for which he has a lien upon the property described in the bill herein as half raft No. 1 (in the bill the raft is called No. 10, but when divided the half left at Boston Bay is called half raft No. 1; the half taken to St. Louis as half raft No. 2), whether such lien be established in this or any other suit to which Knapp, Stout & Co. Company may be defendants, or in a suit on such bond, \* \* \* and shall well and truly pay and satisfy all such costs as may be adjudged against said Knapp, Stout & Co. Company, in this suit, or any other suit which complainant may bring against said Knapp, Stout & Co. Company, or on any such bond for the collection of the amount for which complainant, John McCaffrey, claims to have a lien upon the property above described."

"It is further ordered and adjudged upon filing such bond the complainant shall surrender the property to Knapp, Stout & Co. Company."

"It is further ordered, adjudged and decreed, that the rights of the parties hereto shall in no way be

prejudiced by this order or by complainant surrendering the property in accordance with this order, but all the rights of the parties hereto, *including the right of the defendant to object to the jurisdiction of this Court, are hereby expressly reserved.* And it is farther expressly ordered and adjudged that this order shall not in any way prejudice the rights of the parties herein as to the facts essential to the determination of this cause, and that in case complainant shall at any time hereafter bring any other suit to enforce the lien he claims on the property included in half raft No. 1, such suit shall be, and this suit shall be in all things determined, as though he had not surrendered possession under this order, and his rights to a lien on such half raft shall in no wise be prejudiced by his compliance with this order, and all rights to a lien are hereby expressly reserved, and may be enforced in a suit against Knapp, Stout & Co. Company, precisely as though he had not under this order surrendered possession of said half raft, but in such suit hereafter brought, complainant upon pleading and proving this order, shall have the same right to proceed to decree or judgment against Knapp, Stout & Co. Company, as though he, complainant, still continued in such possession of such property as he had at the time this suit was instituted. It is further ordered and decreed that this order shall not be construed as a confession by Knapp, Stout & Co. Company, that complainant is rightfully in possession of half raft in controversy, or as a confession that complainant had possession of such property when this suit was brought, nor is it in any way an adjudication by this Court that any one is rightfully in possession of said property." (Printed Transcript of Rec., pp. 52-53.)

Thereupon, on the 13th day of April, 1895, the Knapp, Stout & Co. Company filed a bond as required by the Court and took the raft. The condition of the bond was:

"That if the Knapp, Stout & Co. Company shall pay to John McCaffrey all sums of money for which he has

or had at the time said suit was instituted a lien as against Knapp, Stout & Co. Company, on half raft No. 1 \* \* \* whether such lien be established in said cause now pending, or in any other suit to which Knapp, Stout & Co. Company may be defendants, or in a suit on the bond, or in any other suit that John McCaffrey may bring against Knapp, Stout & Co. Company for the collection of the amount for which complainant shall have been adjudged by the Court in said suit or suits to have a lien upon said half raft No. 1." (Printed Transcript of Rec., p. 22.)

At the August Term, 1895, the Knapp, Stout & Co. Company, the Schulenburg & Boeckeler Lumber Company, filed separate answers, setting up their defenses, and the assignees also answered, filing a joint answer. In each and all of these answers it is denied that the Circuit Court of Mercer County has any jurisdiction of the case, and in each answer it is averred that exclusive jurisdiction is vested in the United States Courts in Admiralty.

A hearing was had on the bill, answers, replication and evidence taken in open court at the March Term, A. D. 1896, and at the March Term, 1897, a decree was entered dismissing the bill at complainant's costs, the Court deciding it had no jurisdiction.

An appeal was taken to the Appellate Court of Illinois, Second District, by McCaffrey.

The Appellate Court reversed the decision of the Circuit Court, deciding the Circuit Court of Mercer County, Illinois, had jurisdiction and remanded the cause with directions to the Circuit Court to enter a decree in favor of McCaffrey in the sum of \$3,643.17, with interest thereon from November 13, 1894, at five per cent.

Knapp, Stout & Co. Company appealed to the Supreme Court of the State of Illinois, claiming that the contract being maritime, the lien was only enforceable in the United States Courts of Admiralty, and the Circuit Court of

Mercer County, Illinois, had no jurisdiction. The Supreme Court of Illinois affirmed the judgment of the Appellate Court, and Knapp, Stout & Co. Company appeal from that decision to this Court.

The decisions of the Appellate and Supreme Courts of Illinois have settled that McCaffrey had not delivered the half raft, No. 1, that there was due him a sum of money, for the towage of the same, and that he had a lien on the raft for the towage, and equity would enforce that lien.

The questions before this Court are: 1st. Is the contract of towage a maritime contract? If so, must not the lien for towage be enforced only in United States Courts of Admiralty? and therefore the Circuit Court of Mercer County had no jurisdiction. 2d. Did Knapp, Stout & Co. Company, by entering into bond under the order of Court, waive their right to insist that the State Courts of Illinois had no jurisdiction.

## BRIEF.

### I.

The contract in this case was for the towage of rafts on the Mississippi River from Stillwater, Minnesota, to St. Louis, Missouri. It is a maritime contract.

1 Amer. & Eng. Ency. Law (2d. Ed.), p. 255;  
Benedict on Admiralty, Sec. 213 (Ed. 1894);  
The Encyclopedia Britannica, Article "Ship";  
Ins. Co. v. Dunham, 11 Wall. 26-29;  
The W. J. Walsh, 5 Benedict, 72;  
Amer. & Eng. Ency of Law, Vol. 26, pp. 93-4;  
Mason v. Steam Tug Muntaugh, 3 Fed. Rep. 404;  
The Cheeseman v. Two Ferry Boats, Fed. Cas. No. 2633;

Williams v. Steam Tug Cox, 3 Fed. Rep. 645;  
The Dick Keys Fed. Cases, No. 3898;  
Connolly v. Ross, 11 Fed. Rep. 342;  
The E. M. McChesney Fed. Cases, No. 4464;  
The Nannie Lamberton, 79 Fed. Rep. 121;  
The Florence Fed. Cases, No. 4879;  
*In re Williams et al.*, 74 Fed. Rep. 648;  
The Gate City Fed. Cas., No. 5267;  
The E. Luckenback, 15 Fed. Rep. 924;  
The General Cass, Fed. Cas. No. 3808;  
The Wm. Muntaugh, 17 Fed. Rep. 259;  
The Flora Fed. Cas., No. 4878;  
Disbrow v. Walsh Bros., 36 Fed. Rep. 607;  
The Kate Tremaine Fed. Cas., No. 7622;  
The Alabama, 19 Fed. Rep. 544; 22 Fed. Rep. 449;  
The Pioneer, 30 Fed. Rep. 206;  
Saylor v. Taylor, 77 Fed. Rep. 476;  
Rodgers v. Scow, 80 Fed. Rep. 736;  
The Hezekiah Baldwin, 8 Ben. 556;  
The Mystic, 30 Fed. Rep. 73;  
The Governor, 77 Fed. Rep. 1000;  
The Mayflower, 80 Fed. Rep. 736;  
U. S. v. One Raft of Timber, 13 Fed. Rep. 796;  
Muntz v. A Raft of Timber, 15 Fed. Rep. 555;

The Rock Island Bridge, 6 Wall. 213;  
Cartier v. The F. P. M. No. 2, 33 Fed. Rep. 511;  
Seabrook v. Raft, 40 Fed. Rep. 590;  
Fifty Thousand Feet of Timber, 2 Low. 64;  
A Raft of Spars, 1 Abbott's Admr. 485;  
Wilson v. Sibley, 36 Fed. Rep. 379;  
*Ex Parte* Boyer, 109 U. S. 629;  
*Ex Parte* Easton, 95 U. S. 68;  
The International, 83 Fed. Rep. 840;  
The Atlantic, 53 Fed. Rep. 607;  
The Starbuck, 61 Fed. Rep. 502;  
Lawrence v. Flatboat, 84 Fed. Rep. 200;  
Affirmed in Southern Log Cart Co. v. Lawrence, 86  
Fed. Rep. 907;  
Whitmire v. Cobb, 88 Fed. Rep. 91;  
Bywater *et al.* v. A Raft of Piles, 42 Fed. Rep. 917;  
The New York, 93 Fed. Rep. 495;  
McMasters v. One Dredge, 95 Fed. Rep. 832;  
The Public Bath No. 13, 61 Fed. Rep. 692;  
The International, 83 Fed. Rep. 840;  
McRae v. Dredging Co., 86 Fed. Rep. 344.

## II.

The contract being maritime, to enforce the lien for towage of the raft the United States Admiralty Courts have exclusive jurisdiction, not only of Federal Courts, but of all State Courts.

The Genesee Chief, 12 How. (U. S.) 457;  
The Magnolia, 20 How. (U. S.) 296;  
The Moses Taylor, 4 Wall. 411;  
The Steamboat Ad. Hine. v. Trevor, 4 Wall. 555;  
The Belfast, 7 Wall. 624;  
The Eagle, 8 Wall. 15;  
The J. E. Rumbell, 148 U. S. 1;  
Moran v. Sturges, 154 U. S. 256;  
The Glide, 167 U. S. 606.

c. The admiralty jurisdiction extends to the entire navigable river system of the United States.

Ad. Hine v. Trevor, 4 Wall. 555;

*Ex Parte* Garnett, 141 U. S. 1;

McGinnis v. Pontiac, 5 McLean, 359;

The Mantella, 87 U. S. (20 Wall.) 430;

The Magnolia, 20 How. 296;

*Ex Parte* Boyer, 109 U. S. 629.

b. The ninth section of the act of 1789 saves to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it. This has been incorporated in all subsequent revisions of the United States Statutes, and is now the law. This suit does not come within this saving clause; it is not an action at common law, but a suit in equity.

The Moses Taylor, 4 Wall. p. 431;

The Hine, 4 Wall. p. 555;

Moran v. Sturges, 154 U. S. pp. 256-276;

The Glide, 167 U. S. 606-617.

### III.

The plaintiff in error has omitted nothing it should have done, or done anything which prevents it from insisting that the State Courts had no jurisdiction of this suit.



## ARGUMENT.

### I.

The contract in this case was for the towage of rafts on the Mississippi River from Stillwater, Minnesota, to St. Louis, Missouri. It is a maritime contract.

Lumber on the Mississippi River is placed into a raft. It consists of a number of cribs of lumber, all securely fastened together. A raft contains many thousands of feet of lumber. Rafts have large oars at each end, which are worked by the crew on the raft to keep it in the channel of the river. A pilot, when the raft is floating, forms part of the crew. The raft floated down the river, guided by the pilot and crew, until it reached its destination, when it was landed. Of late years, on account of bridges being built in the Mississippi River, making it dangerous to float rafts between the bridge piers, rafts are now generally towed by steamboats.

The contract in this case is plain; it is to tow rafts with steamboats from Stillwater, Minnesota, to St. Louis, Missouri.

Is not this a maritime contract?

Benedict, in his work on Admiralty, Sec. 213 (Ed. 1894), says:

"It is believed that a sure guide, in matters of contract, is to be found in the relation which the cause of action has to a ship, the great agent of maritime enterprise, and to the sea as a highway of commerce. Where there is navigable water and ships and vessels, these are the subjects of maritime law. If a case relates to a ship, or to commerce on navigable waters, then it is subject to the maritime law, and is a case of admiralty and maritime jurisdiction."

The Encyclopedia Britannica, Article "Ship," says:

"A maritime lien can only exist upon movable things engaged in navigation, or upon things which are the subject of commerce on high seas or navigable waters. It may arise with reference to vessels, steamers and rafts, and upon goods and merchandise carried by them."

There could be no maritime lien without there being a maritime contract.

In the *Belfast*, 7 Wall. 637, it was contended that admiralty jurisdiction did not attach, because goods were to be transported from one port to another in the same State, and were not the subject of interstate commerce. But as the transportation was on a navigable river, the Court decided in favor of jurisdiction, because it was a maritime transaction. Justice Clifford said:

"Contracts, claims or service, purely maritime, touching rights and duties appertaining to commerce and navigation, are cognizable in the admiralty courts."

If the lumber had been loaded in the steamer instead of towing the lumber in the raft, it would have been a contract of freightage on navigable waters, and therefore a maritime contract. The *Belfast*, 7 Wall. 624; the *Edely*, 5 Wall. 481; the *Bird of Paradise*, 5 Wall. 545. If the lumber had been loaded on flatboats or barges, and thus towed, it would have been the same as towing the raft. Furnishing the motive power by towing the lumber in the raft can make no difference.

In the *W. J. Walsh*, 5 Benedict, 72, Justice Benedict said:

"There is no room to contend that towage contracts set up in the libel are not maritime contracts. A maritime contract in law, as now understood, is any contract which necessarily is appurtenant to navigation, such as the transportation of passengers or freight on navigable waters, or the navigation of vessels on such waters, or supply the necessities of vessels used on

such waters. A contract to furnish the motive power to a vessel so used is of the same class. It appertains to navigation in the strictest sense, and is as distinctly maritime in character as a contract to steer a boat or to carry cargo in her. The steamboats which tow the boats and barges, by means of which commerce between New Jersey and New York is transacted, are as much engaged in navigation as are the boats in which the cargoes are placed, and it is not navigation, but commerce, among the states."

In *Mason v. Steam Tug Murtaugh*, 3 Fed. Rep. 404, the Court of Admiralty rendered judgment for negligently causing the loss of a barge and its cargo while towing; the same in *Williams v. Steam Tug Co.*, 3 Fed. Rep. 645, and in *Connolly v. Ross*, 11 Fed. Rep. 342, for negligently causing the loss of a canal boat; the same in the *Nannie Lamberton*, 79 Fed. Rep. 121; in *Re Williams et al.*, 74 Fed. Rep. 648, it was a coal barge; in the *E. Luckenback*, 15 Fed. Rep. 924, it was a dredgeboat; in *Wm. Murtaugh*, 17 Fed. Rep. 259, it was a coal barge; in *Disbrow v. the Walsh Brothers*, 36 Fed. Rep. 607, a barge without sails or rudder used for transporting brick, on which men were employed in loading and unloading, was held to be subject to a lien for wages of the men employed; to the same effect are the *Atlantic*, 53 Fed. Rep. 607; the *Public Bath*, No. 13, 61 Fed. Rep. 692; *Lawrence v. Flatboat*, 86 Fed. Rep. 200; the *Destroyer*, 56 Fed. Rep. 310; *Log Cart & Supply Co. v. Lawrence*, 86 Fed. Rep. 907; *McRae v. Bowers Dredging Co.* 86 Fed. Rep. 344; (this last case quotes numerous authorities); the *Starbuck*, 61 Fed. Rep. 502. In the *Alabama*, 19 Fed. Rep. 544, it was held that dredges and scows with no motive power of their own are vessels and subject to a maritime lien for towing. On appeal to the Circuit Court judgment was affirmed in 22 Fed. Rep. 449. To the same effect is the *pioneer*, 30 Fed. Rep. 206. These cases are followed in similar cases by *Saylor v. Taylor*, 77 Fed. Rep.

476. In *Rogers v. Scow*, 80 Fed. Rep. 736, it was held that a scow was liable for towage; and in the *Hezekiah Baldwin*, 8 Ben. 556, that a floating elevator was also. In the *Mystic*, 30 Fed. Rep. 73, a collision caused while towing in the Chicago River was held to be subject to admiralty jurisdiction.

In these cases the vessels, or boats, had no motive power, but they were towed, and this towing was held a maritime contract, and the lien for such towing enforceable in a court of admiralty. We take it there can be no difference in principle between such boats and a large raft of lumber and that the towage of a raft is a maritime contract. We think this has been clearly settled by authority as well as upon principle. In the *United States v. One Raft of Timber*, 13 Fed. Rep. 796; the Court held a raft was embraced in sections 4233 and 4234 of the Revised Statutes, and was liable to a penalty for not carrying white lights on the raft at night; that although rafts were not named in the statute, yet the words of the statute, "every vessel," included a raft.

In *Muntz et al. v. A Raft of Timber*, 15 Fed. Rep. 555, it was held that a raft of timber is subject to the jurisdiction of the Admiralty Court in the matter of salvage.

In the *Rock Island Bridge*, 6 Wall. 213, Justice Field used this language:

"A maritime lien can only exist upon moveable things engaged in navigation, or upon things which are the subjects of commerce on the high seas or navigable waters. It may arise with reference to vessels, steamers and rafts, and upon goods and merchandise carried by them."

In *Cartier v. The F. & P., M.*, No. 2., 33 Fed. Rep. 511, which was a suit brought by the owner of a raft, which was being towed in Lake Michigan, against the steamboat for negligently running into the raft, breaking it, and causing the loss of a number of the logs. It was con-

tended that a raft of logs was not the subject-matter of maritime jurisdiction so as to enable the owner to maintain the suit and recover for the injury and loss sustained. Dyer, J., after reviewing all the previous decisions and deciding the Court had jurisdiction, said:

“Many other cases might be cited, showing the extension, in various directions of the admiralty jurisdiction since the days of the old tide-water doctrine—cases that include injuries to barges in tow of other vessels, ferry-boats, scows, yachts, pleasure boats, and other craft which would have had no recognition as “ships or vessels” in the earlier history of Admiralty law in this country. But further discussion of the question seems superfluous, as I have no doubt, in the present state of the judicial decision on this subject, this Court, as a court of admiralty, has jurisdiction of the controversy set forth in the libel and answer in this case.”

In *Wilson v. Sibley*, 36 Fed. Rep. 379, a tug undertook to tow a raft from Bay Minette Creek to the City of Mobile, and in doing so caused a loss of part of the raft. The Court rendered a decree in favor of the libellant for the loss of the logs.

In *Seabrook v. Raft*, 40 Fed. Rep. 596, a steam dredge was run into by a raft and injured; the owner brought a libel *in rem*. It was claimed there was no jurisdiction; that a libel would not lie against a raft. The Court reviewed the various decisions on this point, and held the Court had jurisdiction, deciding, “that a raft is a water craft distinctly appears in Section 4233, Revised Statutes, Rule 12: ‘Coal-boats, trading-boats, rafts, or other water craft.’”

In *Fifty Thousand Feet of Timber*, 2 Lowell, page 64, the Court held that a claim for salvage may be maintained in a court of admiralty for saving a raft of timber. To

the same effect is *A Raft of Spars*, 1 Abbott's Admr. 485, and *Bywater v. A Raft of Piles*, 42 Fed. Rep. 917; *Whitnire v. Cobb*, 88 Fed. Rep. 91.

In *The New York*, 93 Fed Rep. 495, it was held that a barge without means of self propulsion is subject to a maritime lien for breach of a contract of hiring to the same extent as any other vessel. We take it, the law deduceable from the decisions is, that a contract of towage, whether it be of a steamer, boat, barge or raft, is a maritime contract, and, upon the performance of such contract, when the work, or towage, has been done, that there is a lien for such work upon the vessel or raft. The Appellate Court of the State of Illinois, in rendering its decision in this case, by Dibell, J., after citing decisions on both sides on this point, uses this language:

“Perhaps the sounder argument supports the position that such a raft on a navigable river is a proper subject of admiralty jurisdiction.”

The Supreme Court of the State of Illinois, on appeal, concurred in the opinion of the Appellate Court, and adopted the opinion of that Court as its own, thus agreeing with the Appellate Court that the sounder argument supports the position that a raft on a navigable river is a proper subject of admiralty jurisdiction; therefore, it conclusively follows that if a raft is the subject of admiralty jurisdiction, that such a contract as was made in this case, for the towage of a raft, is a maritime contract, and McCaffrey, having towed all the raft from Stillwater, Minnesota, to Boston Bay, and half of the raft from Boston Bay to St. Louis, that he had a maritime lien against the raft for such towage.

## II.

**The contract being maritime, to enforce the lien for towage of the raft, the United States Admiralty Courts have exclusive jurisdiction, not only of Federal Courts, but of all State Courts.**

How is this lien given by this maritime contract enforced?

In the Constitution of the United States, by Sec. 2, of Art. 3, it is provided that:

“The judicial power of the United States shall extend to all cases, in law and in equity, arising under this constitution, \* \* \* to all cases of admiralty and maritime jurisdiction.”

Congress passed the Judiciary Act in 1789, by which the first Courts of Admiralty were established, and by which it was provided that the District Courts of the United States “shall have exclusive cognizance of all causes of admiralty and maritime jurisdictions,” etc.; “saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it.”

This section has been incorporated in every revision that has been made of the statutes of the United States, and is to be found in the revision of 1878 in chapter 3, page 95, par. 8, of section 363.

The Supreme Court of the United States in the case of the “Genesee Chief,” 12 How. 443, held that the United States District Courts had jurisdiction over cases upon the lakes and navigable waters of the United States. In this suit it was claimed that the propellor Genesee Chief ran into the schooner Cuba and injured her while she was on a voyage on Lake Ontario. The owners of the Cuba filed a libel against the Genesee Chief, and its owners, in the United States District Court for the Northern District of New York. It was claimed the Court had no jurisdiction, because the collision did not take place on the high

seas, tide water rivers, etc. The District Court held in favor of jurisdiction; this, on appeal, was affirmed in the United States Circuit Court, and also affirmed by United States Supreme Court, Chief Justice Taney, on page 457, using this language:

"It is evident that a definition that would at this day limit public rivers in this country to tide water rivers, is utterly inadmissible. We have thousands of miles of public navigable water, including lakes and rivers in which there is no tide. And, certainly there can be no reason for admiralty power over a public tide water, which does not apply with equal force to any other public water used for commercial purposes and foreign trade. The lakes and waters connecting them are undoubtedly public waters; and we think are within the grant of admiralty and maritime jurisdiction in the Constitution of the United States."

This decision has been followed by numerous decisions of the United States Supreme Court, to some of which we refer the Court under Point II. of our brief. In *Hine v. Trevor*, 4 Wall., p. 568, the Court uses this language, viz.:

"It must be taken, therefore, as the settled law of this Court, that wherever the District Courts of the United States have original cognizance of admiralty causes, by virtue of the Act of 1789, that cognizance is exclusive, and no other Court, State or National, can exercise it, with the exception always of such concurrent remedy as is given by the common law."

In *The Glide*, 167 U. S. 606, the point decided was that the enforcement *in rem* of the lien created upon a vessel by the Public Statutes of Massachusetts, for repairs and supplies in her home port, is exclusively within the admiralty jurisdiction of the Courts of the United States. Justice Gray, who delivered the opinion of the Court, reviewed and considered all the previous decisions on this question of jurisdiction, and said:



"In conclusion, the considerations by which this case must be governed may be summed up as follows: The maritime and admiralty jurisdiction conferred by the Constitution and laws of the United States upon District Courts of the United States is exclusive. A lien upon a ship for repairs or supplies, whether created by the general maritime law of the United States, or by a local statute, is a *jus in re*, a right of property in the vessel, and a maritime lien, to secure the performance of a maritime contract, and therefore may be enforced by admiralty process *in rem* in the District Courts of the United States. When the lien is created by the general maritime law, for repairs or supplies in a foreign port, no one doubts at the present day that, under the decisions in the *Moses Taylor* and *The Hine*, 4 Wall. 411, 555, above cited, the admiralty jurisdiction *in rem* of Courts of the United States is exclusive of similar jurisdiction of the Courts of the State. The contract and the lien for repairs or supplies in a home port, under a local statute, are equally maritime, and equally within the admiralty jurisdiction, and that jurisdiction is equally exclusive."

We take it that the contract and lien for repairs and supplies is no greater, or no different, than the contract and lien for towage; that the lien in each case is maritime; that in each case admiralty has jurisdiction, and in each case that jurisdiction is exclusive.

The decisions of the United States Supreme Court hold, *first*, that the jurisdiction of the Admiralty Courts of the United States is exclusive; and, *second*, that the jurisdiction of said courts extend to the entire navigable river system of the United States; and as the Mississippi River is a navigable river, and the contract for towage on it was a maritime contract, it follows that to enforce the lien given for towing that raft under the contract the Admiralty Courts of the United States alone had jurisdiction.

In the revision of the United States laws, made in 1878, it was expressly provided in Sec. 711, Chapt. 12, p. 139, as follows:

"The jurisdiction vested in courts of the United States in the cases and proceedings hereinafter mentioned shall be *exclusive* of the courts of the several States (par. third); of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common law remedy, when the common law is competent to give it."

This saving clause was in the first statute passed in 1789, and has remained ever since on the statute book. Was McCaffrey in this suit pursuing a common law remedy? What is a common law remedy?

Keeping in view that the language of the saving clause in the statute is the right of *a common law remedy*, let us ascertain what remedies are enforced by the common law. How is common law defined?

"The body of rules and remedies administered by courts of law, technically so-called, in contradistinction to those of equity and to the cannon law." (Bouvier.)

Rapalje & Lawrence, in their dictionary, thus define it:

"In the widest sense of the word, the common law is that part of the law of England which, before the Judicature Acts, was administered by the common law tribunals, especially the former Courts of Queen's Bench, Common Pleas, and Exchequer, as opposed to Equity, or that part of the law of England which was administered by the Courts of Chancery."

Justice Daniel, in *Fenn v. Holme*, 21 How. (U. S.) 481, on page 486, quotes approvingly from the opinion in *Parsons v. Bedford et al.*, 3 Peters, the following language, viz.:

"The Constitution had declared, in the third article that the judicial power shall extend to all cases *in law*

*and equity* arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority, etc. It is well known that in civil suits, in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved at common law, the natural conclusion is, that the distinction was present in the minds of the framers of the amendment. By *common law* they meant what the Constitution denominated in the 3d article *law*, not merely *suits* which the common law recognized amongst its old settled proceedings, but suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where *equitable rights* alone were recognized and equitable remedies administered.' "

In *Bennett v. Butterworth*, 11 How. (U. S.) 669, the Chief Justice used this language:

"The adoption of the State practice must not be understood as confounding the principles of law and equity, nor as authorizing legal and equitable claims to be blended together in one suit. The Constitution of the United States, in creating and defining the judicial power of the General Government, establishes this distinction between law and equity, and a party who claims a legal title must proceed at law, and may undoubtedly proceed according to the forms of practice in such cases in the State courts. But if the claim be an equitable one, he must proceed according to the rules which this Court has prescribed, regulating proceedings in equity in the courts of the United States."

In the State of Illinois the distinction between actions at common law and suits in equity have always been observed. The Constitution of the United States, in creating and defining the judicial power of the General Government, preserves the same distinction, the Court rules, and the practice in the Federal Courts maintain it,

and the decisions of the Supreme Court of the United States uphold it. Chief Justice Fuller thus expresses it in *Green v. Mills*, 25 U. S. Appeals, p. 394:

"The jurisprudence of the United States has always recognized the distinction between common law and equity under the constitution, in matters of substance as well as of form and procedure; and the distinction has been steadily maintained, although both jurisdictions, are vested in the same courts. *Fenn v. Holme*, 21 How. 481, 484; *Thompson v. Railroad Companies*, 6 Wall. 134; *Cates v. Allen*, 149 U. S. 451; *Mississippi Mills v. Cohn*, 150 U. S. 202, 205."

And the test of equity jurisdiction in the courts of the United States, namely: the adequate remedy at law—is the remedy which existed when the Judiciary Act of 1789 was adopted, unless subsequently changed by Congress; and is not the existing remedy in a State or Territory by virtue of local legislation; *McConihay v. Wright*, 121 U. S. 201. Therefore when the ninth section of the Act of 1789, which created courts of admiralty, and giving to such courts exclusive jurisdiction, saved to suitors in all cases the right of a *common law* remedy; where the common law is competent to give it, it means only a remedy given by common law as distinguished from an equitable remedy, and does not include an equitable remedy.

In the *Moses Taylor*, 4 Wall. p. 411, the facts are that in 1863 the steamboat *Moses Taylor* was engaged in the Pacific Ocean in carrying passengers and freight between Panama and San Francisco. The owner of the steamer made a contract to transport one Hammons for \$100. For an alleged breach of the contract, on arrival at San Francisco, suit was brought before a justice of the peace against the steamer under a statute of California, which provided that steamers, vessels, etc., shall be liable for the "non-performance of any contract for the transportation of persons or property made by their respective

owners," etc. The agent of the vessel answered, claiming the Court had no jurisdiction. The justice decided he had, and rendered judgment for plaintiff. On appeal to the County Court, the judgment was affirmed. The judgment of the County Court, on account of the amount involved, was conclusive, so far as the State Courts were concerned. A writ of error was taken from the County Court to the United States Supreme Court, which held that the United States Courts alone had jurisdiction, and directed the suit to be dismissed. It was contended in that Court that the proceedings in the State Court fell within the exception contained in the Judiciary Act of 1789, saving suitors a common law remedy, etc. Justice Field, in the opinion, uses this language on page 431, viz.:

"The case before us is not within the saving clause of the ninth section. That clause only saves to suitors 'the right of a common law remedy when the common law is competent to give it.' It is not a *remedy* in the *common law courts* which is saved, but a common law remedy. A proceeding *in rem*, as used in admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common law courts it is given by statute."

In *Morgan v. Sturges*, 154 U. S. 256, where a suit was brought to dissolve a corporation, a receiver was appointed. Afterwards libels were filed in the United States District Court by seamen for wages, and the marshal took possession of some of the boats. The receiver enjoined the marshal from selling, which judgment was affirmed in the Supreme Court and in the Court of Appeals of New York. On writ of error to the United States Supreme Court, it held that the United States District Court had exclusive jurisdiction, and the judgment of the State Court was erroneous, and the marshal had the right to retain the property.

Chief Justice Fuller, on page 276, uses this language:

"But the question in the case at bar arises in respect of the State Court and a District Court of the United States, whose cognizance of all civil cases of admiralty and maritime jurisdiction is, under the Constitution and by the ninth section of the Judiciary Act of 1879 exclusive.' *New Jersey Steam Nav. Co. v. Merchants Bank of Boston*, 47 U. S. (6 How.) 390; *The Moses Taylor v. Hammons*, 71 U. S. (4 Wall.) 411; *The Ad. Hine v. Trevor*, 71 U. S. (4 Wall.) 555; *Rodd v. Heartt* ("The Lottawanna"), 21 Wall. 558; *Johnson v. Chicago & P. Elev. Co.*, 119 U. S. 388; *The J. E. Rumbell*, 148 U. S. 1. As said Mr. Justice Miller: 'It must be taken to be the settled law of this Court, that wherever the District Courts of the United States have original cognizance of admiralty causes, by virtue of the Act of 1789, that cognizance is exclusive, and no other court, State or National, can exercise it, with the exception always of such concurrent remedy as is given by the common law.' 71 U. S. (4 Wall.) 568. The act saves to suitors in all cases "the right of a common law remedy, where the common law is competent to give it;" that is, not a remedy in the common law courts, but a common law remedy. Suitors are not compelled to seek such remedy, if it exist, nor can they, if entitled, be deprived of their right to proceed in a court of admiralty, and the State Courts have no authority to hear and determine a suit *in rem* to enforce a maritime lien. *The Belfast v. Boon*, 74 U. S. 624; *Bird v. Josephine*, 39 N. Y. 19. 'A statutory proceeding to wind up a corporation is not a common law remedy, and a maritime lien cannot be enforced by any proceeding at common law.'"

It was contended by counsel for McCaffery in the Appellate and Supreme Courts of the State of Illinois, that McCaffery had a common law lien—the lien of a bailee; that he could enforce the lien in two ways, either by a libel in the Admiralty Courts, or by foreclosing the lien in equity. We contended that he could no have both a mari-

time lien and a common law lien; that his lien was the former and not the latter, and even if the latter, it was only a passive lien, the mere right to retain the possession, and such a lien was not enforceable in equity. To sustain our position, we relied upon the following authorities:

Benedict on Admiralty, Sec. 290;

Jones on Liens, Secs. 22, 21, 335, 1038;

Buggo v. Boston & Lowell R. R. Co., 6 Allen, 246-252;

Meaney v. Head, 1 Mason (U. S.) 319;

I. & St. L. R. R. Co. v. Hemdon, 81 Ill. 143;

Doane v Russell, 3 Gray, 382;

Hunt v. Haskell, 24 Me. 339;

Amer. & Eng. Ency. of Law, Vol. 13, p. 576;

The Thames Iron Works and Ship Building Co. v. Patent Derrick Co., 29 Law Journal (Ch.) 714.

This last case is directly in point and is a case of great hardship. The Appellate and Supreme Courts of Illinois, in order to retain jurisdiction of the suit, decided the lien was a bailee's lien, and it could be enforced in equity.

If we are correct that the lien for towage in this case is a maritime lien, then in the language of Chief Justice Fuller "a maritime lien can not be enforced by any proceeding at common law." It is a well established doctrine that legal and equitable remedies are different, and that equity cannot enforce a common law right, if there is complete and adequate remedy at law. The statute was never intended to save the enforcement of a common law right by a remedy in equity. It is only a common law remedy that is saved.

Now, what is the object of this suit? The prayer in the bill clearly shows this. The prayer is for: First, that defendants answer. Second, that complainant "may be decreed to have a first lien on said half-raft No. 1" for the amount due him. Third, that the defendants be required to pay said amount by a certain day. Fourth, in default thereof, the raft to be sold to pay the amount due com-

plainant, and such sale convey to the purchaser the absolute title, etc. There is no personal decree prayed for against the defendants, or any of them, for the amount due, no judgment as to them, merely a finding of the amount due for which the lien is claimed, and a sale of the property if not paid. There could be no personal decree against any of the defendants, except the Schulenburg & Boeckeler Lumber Company, and they were insolvent. The prayer is somewhat similar to that in a bill to foreclose a mortgage. It is a proceeding, in all intents and purposes, against the thing, the raft, asking that a lien be established, and the raft sold. If the Court decreed as prayed for in the bill, McCaffrey would have obtained the same relief he could have had by a libel in admiralty.

We have shown that this contract is a maritime contract, and that to enforce the lien which the law gives in such cases, the Admiralty Courts of the United States have exclusive jurisdiction, and the State Court could not enforce the same, unless in so doing, the complainant was pursuing a common law remedy. We have shown that the distinction between common law and equity is maintained in this State and in the Federal Courts; and this suit being in equity, the complainant is not pursuing a common law remedy, does not bring himself within the exception or saving clause, and therefore the State Court had no jurisdiction.

### III.

**The plaintiff in error has omitted nothing it should have done, or done anything which prevents it from insisting that the State Courts had no jurisdiction of this suit.**

Let us examine the status of the case. On the 19th of February, A. D. 1895, the bill in this suit was filed in the Circuit Court of Mercer County, Illinois. The bill stated complainants' claim, alleging the claim was based upon



towing the raft from Stillwater, Minnesota, to Boston Bay Harbor, and half the raft from there to St. Louis, Missouri, and that he was in possession of the other half of the raft in Boston Bay Harbor; the bill then alleged that Schulenburg & Boeckeler Lumber Company claimed the said half raft had been sold to the Knapp, Stout & Co. Company and the Knapp, Stout & Co. Company claimed it owned the raft, and intended to take forcible possession of the half raft on the opening of navigation. The bill alleged that the half raft was attached to the shore within two yards of the open channel of the Mississippi River, and it would be ruinous, financially, to complainant, for him to keep a force of men large enough to defend the possession of said half raft against said Knapp, Stout & Co. Company from the time navigation opened in the spring, until this suit would be determined. It was further alleged, that in its present position it would be in great danger of being torn to pieces, destroyed, lost and carried away by what is called the June rise in the Mississippi River. The bill was sworn to (Printed Transcript of Rec., pp. 17 and 19), but a sworn answer was waived. At the March Term of Court, the complainant moved the Court to appoint a receiver to hold the half raft pending the determination of the suit. The Knapp, Stout & Co. Company was not served in the suit, but when informed of the pendency of said motion, filed a counter motion in reply to said motion in which this language was used:

And now comes the defendant, the Knapp, Stout & Co. Company, and appearing for the purpose of this motion only, and expressly limiting its appearance to such purpose and in nowise entering its general appearance herein, on admitting that this Court has jurisdiction over the subject matter in controversy in said suit, to-wit: The raft mentioned in the bill of complaint, but protesting that this Court has no jurisdiction

thereof, objects to the Court appointing a receiver for the raft, and moved the Court for the reasons therein given (Printed Transcript of Rec., pp. 20, 21, 22) to require McCaffrey to give a bond in the sum of \$25,000, conditioned that he shall pay unto Knapp, Stout & Co. Company whatever damages it may suffer by McCaffrey holding the raft, in case this Court or any other Court shall decide that it has not jurisdiction of the suit, or that McCaffrey has no lien and no right to hold the said raft.

It also provided that in case McCaffrey would not give a bond that the said Knapp, Stout & Co. Company was willing to enter into bond in the sum of \$6,000 and take the raft.

Prior to the filing of the motion, if the parties had met and agreed that the Knapp, Stout & Co. Company were to enter into a bond of \$6,000, conditioned to pay to McCaffrey whatever sum (if any) the court of final resort might decree was due him in this suit, and upon the delivery of the bond the Knapp, Stout & Co. Company were to take the raft; and it was distinctly understood that the Knapp, Stout & Co. Company should have the right to claim the Court had no jurisdiction. We apprehend that such action by the parties, if done by agreement or consent, either prior to the making of the motion or while pending, would not prevent the Knapp, Stout & Co. Company from insisting that the Court had no jurisdiction of the subject matter.

Now, what was done? Just that very thing. The order that was entered by the Court was not that a receiver be appointed, as prayed in the motion, but the order that was made was made only by *the consent of the parties*; in other words, the parties agreed to it, and by agreement, by consent of parties only, the Court entered the order, and by that agreement, and by the terms of the order the Knapp, Stout & Co. Company had the right to insist that the Court had no jurisdiction of the suit.

Both parties claimed the raft, and each claimed to have possession. The Knapp, Stout & Co. Company claimed that, after it had purchased the raft with the distinct understanding that McCaffrey had no claim or lien on it, and after its watchman had possession of the raft, McCaffrey, after learning of the assignment of Schulenberg & Boeckeler Lumber Company, had put men on the boat, which was wintering along side of the raft, and claimed possession. McCaffrey insisted he had never surrendered the possession of the raft. If McCaffrey held on to the raft, was beaten in the suit, and the raft should be destroyed, he would be liable to heavy damages. It was certain that the Knapp, Stout & Co. Company owned the raft, and it was certain that McCaffrey, at most, had only a claim on the raft, which did not exceed one-fourth of its value. McCaffrey, therefore, was willing that the Knapp, Stout & Co. Company should give him a bond conditioned to pay him whatever claim he might, in this suit, or in any other suit, ultimately succeed in proving against the raft. The parties agreed to this, and also agreed that the giving of such bond was not considered by either party a waiver of any of its rights; but all the rights of the parties, including the right of the Knapp, Stout & Co. Company to object to the jurisdiction of the Court, was expressly reserved, and it was agreed that the Court was to enter such an order, which was done. How does the order read?

“And now, upon consideration of such motion and cross-motion, the Court, upon consideration thereof, and by the consent of the parties, orders and adjudges, that the Knapp, Stout & Co. Company enter into a penal bond in the sum of \$6,000.” (See order, Printed Transcript of Rec., pp. 52, 53 and 54.)

This order, made by *consent of parties*, by agreement, and it providing that *all the rights of the parties* hereto, including the *rights of the defendant* (the Knapp, Stout & Co. Company

the only defendani affected by the order), *to object to the jurisdiction of the Court, is hereby expressly reserved.* Could language be made clearer as to what was the intention of the parties? Could the Court have expressed the intention of the parties more plainly?

In construing a contract or a will, or any written document, the fundamental principle is to ascertain the intention of the parties, and how? By the language used in the writing, and when the intention is ascertained the courts then carry out and enforce that intention. Taking the language used in this order of court, which was entered by consent, is it not absolutely certain that it was the intention of the parties and the Court, that the Knapp Stout & Co. Company should have the right to object to the jurisdiction of the Court? That that right had not only not been waived, but it was expressly provided that that right was reserved. To contend otherwise would be a violation of the agreement, of the express terms of the order, and in the name of justice, and in a court of justice, be perpetrating a wrong upon the Knapp, Stout & Co. Company; it would be depriving them of a right they never waived or surrendered. The Knapp, Stout & Co. Company gave the bond conditioned as provided in the order of Court (Printed Transcript of Rec., pp. 22, 23.) The Knapp Stout & Co. Company then filed its answer (Printed Transcript of Rec., p. 31, etc.), which began as follows:

“This defendant protesting and insisting that it should not be required to answer the complainants, bill of complaint, because the Court has no jurisdiction of the subject matter in this suit for the reason that the matter in controversy is a matter of which the United States Admiralty Courts have sole and exclusive jurisdiction, and this Court has no jurisdiction to decree a lien as is prayed for in complainant's, bill, and this defendant, although hereafter answering

the bill filed in this suit, does not thereby waive or intend to waive the right in the hearing hereof to claim and insist that this Court has no jurisdiction, as above stated."

On the hearing in the Circuit Court the point of jurisdiction was understood by counsel and Court as one of the vital points in the case, was fully argued, and the Court decided that it did not have jurisdiction.

McCaffrey appealed to the Appellate Court, and that Court held that the Circuit Court of Mercer County, Illinois, had jurisdiction, holding that the Knapp, Stout & Co. Company could not raise that question after the giving of the bond, and quote the cases of Johnson v. Chicago and Pacific Elevator Co., 119 U. S. 388; Gindele v. Corrigan 129 Ill. 582; 28 Ill. App. The Court says:

"The order provided with great care that no one should be prejudiced by the order—that it should not be construed to be a confession of anything by anybody, nor an admission that the Court had jurisdiction, etc. Nevertheless, the order was much to the detriment of McCaffrey, and took from him important rights."

The Court does not enlighten us as to what were the important rights the order took from McCaffrey. McCaffrey would never have consented to have a single right, much less "important rights," taken away from him. Yet he consented to the order; agreed to it. In fact, the order, as agreed on, was to the advantage of McCaffrey, as it relieved him of the responsibility of keeping the raft, and gave him a good bond in its place, which assured him the payment of any claims he could substantiate in that suit, or in any other suit, or on the bond itself. The Court, in claiming jurisdiction, admits it does so in violation of the terms of the order, and refuses to carry out the intention of the parties who made the order.

Let us examine the cases referred to by the Court, and which were relied on by McCaffrey's counsel: In *Gindele v. Corrigan*, 129 Ill. 528, the suit was brought under the "Water-Craft Act" against the canal boat "Nunnemacher." It was alleged the Nunnemacher, through the carelessness of the persons in charge of her, ran into the canal boat "Midnight" and sunk her. Suit was brought in attachment by Corrigan, the owner of the "Midnight," as provided by the Water-Craft Act, and the Nunnemacher was seized by the sheriff under the attachment writ. John A. Gindele, as part owner of the Nunnemacher, bonded and released the boat under Sections 15 and 17 of said Act, and the canal boat was discharged from the attachment.

The plaintiff then amended his petition, making Gindele and the sureties on the bond defendants. The suit was contested and judgment rendered against the defendants, personally. The defendants contended that the Court had no jurisdiction, that the jurisdiction was alone in the Admiralty Courts of the United States.

Section 15 provided that any owner or person interested in the water craft, desiring a return of the water craft, which was attached, could file with the clerk of the court in which the suit is pending a bond to the parties who filed the petition in a penalty double the sum alleged to be due, conditioned, that the obligors will pay all money adjudged to be due the claimant, with costs of suit.

Section 17 provided that upon the clerk receiving the bond, he shall issue a writ of restitution, and the water craft be discharged from the attachment lien.

Section 21 provided that upon trial, if judgment shall pass for the petitioner, the judgment shall be rendered against the principal and sureties on the bond.

The Court held that it had jurisdiction, and based it upon two reasons: *First*, that the plaintiff was pursuing a common law remedy; *second*, that the suit after the bond was given was, *in personam*, against the defendants, and a

personal judgment has to be rendered against them. By giving the bond under the statute they agreed, first, to be made defendants in the suit; second, to pay personally any judgment that might be rendered against them. Suppose the statute had provided that the giving of the bond did not take away the right of the defendants to contest the jurisdiction of the Court, would the Court have decided they could not raise that question? If the statute had in it such a provision, then that provision would have been similar to the order of Court in this case. Again, by the very terms of the statute, the bondsmen are made defendants to the suit, and a personal judgment could be rendered against them. No judgment could have been rendered against the Knapp, Stout & Co. Company in this suit. There is no similarity between the cases either upon the facts or the law governing them. We doubt under the decision of *The Glide*, *supra*, if the state courts have jurisdiction under such statutes as the Water Craft Act, where the suit is properly contested.

The case of *Johnson v. The Chicago Elevator Co.*, 119 U. S. 388, was another suit in attachment under the Water-Craft Act of Illinois. The facts are very similar to the case of *Gindele v. Corrigan*, except that an elevator on shore was damaged by the collision, instead of a canal boat. This Court held that the cause of action was not a maritime tort, the substance and consummation of the wrong having taken place on land, and not on navigable water; also, that the suit was *in personam* was a proper one because it was a common law remedy.

Complainant could have brought suit under the Water-Craft Act of the State of Illinois, and attached the raft, and have thus pursued a common law remedy; or he could have proceeded by attachment against the defendants on the ground of non-residence, and pursued a common law remedy, as this Court has decided; but he did not do so.



He brought an equitable suit to foreclose a lien, which is not a common law remedy.

The case of *Leon v. Galceeron*, 11 Wall. 185, is, in principle, very similar to the above cases. By the Statute of Louisiana a mariner had a lien on his vessel for his wages; he brought suit *in personam* therefor, in a State court, and had the vessel sequestered. She was released by the owner by giving bond, with Leon as surety. Judgment was rendered against the owner *in personam*, and the vessel not being returned, the mariner sued the surety on the bond, in the same court, and obtained judgment. On writ of error to this Court, sued out by Leon, it was urged for him that the State court had no jurisdiction to enforce the lien by a seizure before judgment. This Court held that the action was *in personam*; that the State court had jurisdiction, because the plaintiff was pursuing a common law remedy.

In none of these cases were parties endeavoring to enforce or foreclose a lien. They were suing *in personam* for a debt, and attaching property to secure the debt. In this case the complainant claimed a lien upon a maritime contract, a maritime lien, which cannot be enforced by any proceeding at common law. This proceeding in equity is not a common law remedy. The Knapp, Stout & Co. Company appealed from the judgment of the Appellate Court to the Supreme Court of Illinois, which Court adopted the opinion of the Appellate Court and affirmed its judgment, holding the State Court of Mercer County had jurisdiction, and the question, after being presented in all these courts, is now presented to this Court.

• If we are right in our premises, the conclusion follows that the State courts had no jurisdiction of this suit. McCaffrey had no reason to go into equity. He should have either towed the raft to St. Louis, or permitted the Knapp, Stout & Co. Company to have done it, and when



there, have proceeded in the proper forum, the Admiralty Court of the United States, by bringing a libel suit against the raft.

The Knapp, Stout & Co. Company in its cross-motion, insisted the State Court had no jurisdiction, and it was agreed by the parties that it could raise that question on the trial of the suit, and the Court so entered it in the order agreed to by the parties. It then raised it in the answer and all through in this suit; it not only not waived it, but always insisted on it, consequently has now the right to here raise the question, and having that right, and having shown that the State Courts had not jurisdiction, should not the decree rendered in the State Courts be reversed?

CHAS. P. WISE,

Attorney for Plaintiff in Error.

No. 263.

By *Chas. E. Kremer & Guy C. Scott* for D. C.

Office Supreme Court

FILED

APR 9 1900

JAMES H. McKENNEY,

*Filed April 9, 1900.*  
IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

THE KNAPP, STOUT & CO. COMPANY,

*Plaintiff in Error,*

*vs.*

JOHN McOAFPREY,

*Defendant in Error.*

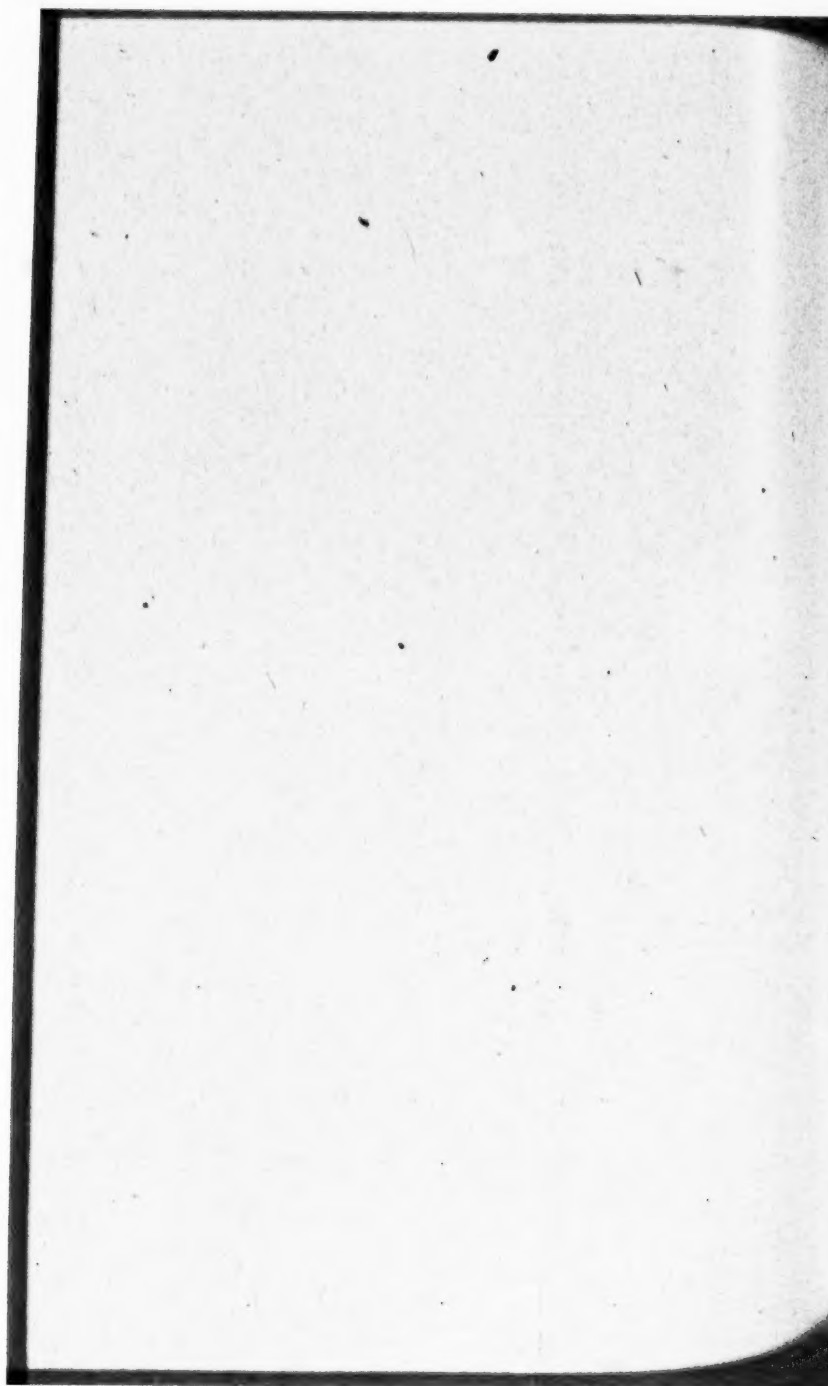
No. 263.

In Error to the Supreme Court of the State of Illinois.

Statement, Brief and Argument for  
Defendant in Error.

CHARLES E. KREMER and  
GUY C. SCOTT.

*For Defendant in Error.*



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*Defendant in Error.*

No. 263.

In Error to the Supreme Court of the State of Illinois.

## Statement, Brief and Argument for Defendant in Error.

### STATEMENT.

The bill filed herein in the Circuit Court of Mercer County, Illinois, was to establish and enforce the ordinary lien of the bailee for his hire.

John McCaffrey, a resident of Davenport, Iowa, under his contract to tow lumber on the Mississippi river from Stillwater, Minnesota, to St. Louis, Missouri, for the Schulenburg & Boeckler Lumber Com-

pany (hereinafter referred to as the Schulenberg Company), on October 13, 1894, took possession of a raft, being the tenth raft of that season and known in this litigation as raft No. X belonging to that company and towed it from Stillwater, Minn., to Boston Bay Harbor in Mercer County, Illinois. Before reaching there the company had requested him to divide the raft and bring one-half of it down as soon as possible. For the purpose of making better time with the remaining half of the raft, he there, on October 26, 1894, divided the raft and laid up one half of it, known as half raft No. 1 in that harbor, and employed one Ed L. Willits, who was the harbor watchman and not in the employ of the Schulenberg Company, to watch the same. That half raft remained there in Boston Bay in McCaffrey's possession until April 16, 1895, when he surrendered it to the Knapp, Stout & Co. Company (hereinafter referred to as the Knapp Company) in pursuance of a decree made herein on the petition of that company. On February 19, 1895, McCaffrey had filed the bill herein to enforce his lien, as the Knapp Company before that time, claiming to be the owner of the half raft in question by purchase, had forbidden him to tow it to St. Louis and threatened to deprive him of possession thereof. On October 26, 1894, after laying half raft No. 1 in Boston Bay, McCaffrey's steamer, the Robert Dodds, George Tromley, Jr., captain, which was towing the raft, proceeded with the remaining half of the raft known as half raft No. 2, to St. Louis, and there delivered it to the Schulenberg Company on November 2, 1894. The steamer immediately returned to Boston Bay, reaching there on the morning of Sunday,

November 4, 1894. The crew, in accordance with McCaffrey's directions, set the boat into the side of the half raft and made both secure to the shore for the purpose of leaving them in the harbor through the Winter, as the Schulenburg Company did not desire that half raft No. 1 be delivered until the next Spring. The captain of the steamer on the same day, November 4, 1894, employed said Willits, who was the harbor watchman, to watch the boat and raft through the Winter for McCaffrey. On the next day, November 5, 1894, the Schulenburg Company made a bill of sale for this half raft No. 1 to The Knapp Company, at St. Louis, for an expressed consideration of \$15,000, but the possession was not delivered. When McCaffrey learned of the assignment made on November 9, 1894, by the Schulenburg Company, he went at once to St. Louis and learned from that company that it claimed to have sold the half raft in Boston Bay to the Knapp Company; he then called on the latter company on November 13, 1894, and informed John H. Douglas, manager of the company, that he was in possession of that half raft, and proposed to hold it for his claim for running the entire raft. Douglas denied McCaffrey's possession, and ordered him to keep away from the half raft. McCaffrey said he had a contract to run the raft to St. Louis, and proposed to do it. Douglas told him not to do it, that the Knapp Company would run the raft itself. And after some further controversy about who was in possession of the half raft, McCaffrey came away. Printed transcript, page 111 and page 196.

Thereafter, on February 19, 1895, McCaffrey filed the bill herein, making the two lumber companies and

the assignees of the Schulenburg Company defendants, setting up the contract and the facts as they are above stated and claiming a lien on half raft No. 1 for the entire towage and charges on raft No. X, averring that the Knapp Company maintained a large force of men and steamers on the Mississippi River, and was threatening to deprive him of that half raft by force; that in its then present position the half raft was within two hundred yards of the open channel of the Mississippi River, and was in danger of being swept away by high water in the Spring, and that it should be moved farther inland; that his right to move it was denied, and that it would be ruinous financially for him to maintain a sufficient force of men to defend his possession against the Knapp Company. The prayer of the bill asks in the usual form that defendants be required to answer without oath and continued as follows: "And that your orator may be decreed to

- have a first lien upon said half raft No. 1, and the
- material deck loaded thereon, for the amount due
- him as aforesaid, and that the defendants may be
- decreed to pay to your orator the amount so due
- him with interest and costs by an early day to be
- fixed by the court, and that in default of such pay-
- ment said half raft, with the material deck loaded
- thereon, or so much thereof as may be necessary,
- shall be sold by such officer of the court, and in such
- manner as the court shall direct, to satisfy the
- amount then due your orator and costs, and in case
- of such sale the purchaser or purchasers shall have
- an absolute title to such property, free from all
- equity of redemption, and all claims of any kind by
- or on the part of any of the defendants, and that the

..defendants and all persons claiming through or under  
 ..them subsequent to the beginning of this suit, may  
 ..be barred of any right to or interest in such portion  
 ..of such property as may be sold pursuant to the de-  
 ..cree of this court, and that your orator may have  
 ..such other and further relief in the premises, both of  
 ..a general and special nature, as to equity may apper-  
 ..tain and to your Honor may seem meet." (Printed  
 transcript, page 18.)

Aside from the amount due from Schulenburg Com-  
 pany to McCaffrey for towing raft No. 10 there is due  
 him from that company many thousand dollars, all  
 of which was due when the bill was filed.

At the succeeding March term, 1895, of the Cir-  
 cuit Court McCaffrey, basing his motion on the aver-  
 ments of the bill, moved for the appointment of a re-  
 ceiver.

The Knapp Company then entered an appearance  
 which it termed a special appearance, but which in  
 fact was a general appearance, as it sought thereby to  
 obtain affirmative relief, and filed what is termed a cross  
 motion, but which in reality is a petition in the al-  
 ternative, invoking the aid of the court, asking that  
 McCaffrey either be required to give bond to save the  
 Knapp Company harmless on account of any damages  
 that might come to the raft by reason of McCaffrey's  
 continued possession thereof, or that McCaffrey be re-  
 quired to surrender the half raft to the Knapp Com-  
 pany upon its entering into bond to pay any lien Mc-  
 Caffrey had upon the half raft, and then the so-called  
 cross motion contains this language, "and the de-  
 ..fendant, being in a court of equity and believing  
 ..that it is but right that this motion should be



"granted, prays the court to grant the same." This cross motion avers that the half raft is worth at least \$17,000. (Printed Transcript, 21.)

There is no warrant in the record nor in fact for the statement made by counsel for appellant, that prior to the filing of the cross motion the parties had met and agreed that the Knapp Company was to enter into a bond of \$6,000, conditioned to pay McCaffrey whatever sum the court of final resort might decree was due him in the suit, and upon the delivery of the bond the Knapp Company was to take the raft. Not only is there nothing in the record to warrant any such assertion, but it conclusively appears that the facts are otherwise from the fact that the motion entered by the Knapp Company was in the alternative, which would not have been the case had there already been an agreement in regard to the disposition that was to be made of the raft.

The court then entered a decree which recites that it is made on consideration of the motion for the appointment of a receiver and of the cross motion, "and by consent of the parties." The decree, while it provides that all "the rights of the parties hereto, including the right of defendant to object to the jurisdiction of this court, are hereby expressly reserved," still provides that McCaffrey "shall surrender the property above described to Knapp, Stout & Co. Company" upon the company giving *bond in the penal sum of \$6,000, to pay any lien which McCaffrey might have upon said half raft, whether the same be established in the suit then pending or in any other suit which might be*

*brought against the Knapp Company or in a suit on such bond.*

On April 13, 1895, the Knapp Company filed a bond in accordance with this decree, and on April 16, 1895, McCaffrey delivered the possession of the half raft in question to the Knapp Company, which by the steamer Saturn at once took it away.

At the August term, 1895, of the Mercer County Circuit Court, all the defendants answered. The two lumber companies answered separately and the two assignees of the Schulenburg Company answered jointly.

Each of the answers denies the jurisdiction of the Circuit Court of Mercer County, and avers that exclusive jurisdiction is vested in the United States Courts in Admiralty. Each of the companies averred the sale of November 5, 1894, to the Knapp Company, and that when McCaffrey laid half raft No. 1 in Boston Bay he delivered it to the Schulenburg Company which in turn delivered it to the Knapp Company. The Knapp Company also denies that McCaffrey had ever been in possession of the half raft at any time; denies that he owned the steamer Robert Dodds and averred that the Knapp Company at all times after November 7, 1894, had been in possession of said half raft, and that whenever it desired to remove the same it would have done so; denied that McCaffrey had any right to move the raft to a place of greater safety and averred that McCaffrey only claimed a lien because he feared he would lose his claim against the Schulenburg Company, "and because he does not like the manager of this defendant, one John H. Douglas," and desires to annoy defendant by this suit.

The assignees, by answer, denied all the averments of the bill, including that of the alleged sale by the Schulenburg Company to the Knapp Company. It also appeared from the answers of the assignees that McCaffrey had filed a claim against them for \$24,558.39, including the amount due for towing raft No. X, but reserving the right to prosecute his claim for lien on the half raft in Boston Bay.

Replications were filed and on a hearing a decree was rendered at the March term, 1897, by the Mercer County Circuit Court, dismissing the bill without prejudice on the ground that exclusive jurisdiction of the subject-matter was vested in the United States Courts in Admiralty.

McCaffrey appealed to the Appellate Court of the Second District of Illinois, and that court at the December term, 1897, reversed and remanded the cause with directions to enter a decree in McCaffrey's favor for \$3,643.17 and interest, the court holding that he had a lien on half raft No. 1 for that amount, which was the sum due for the towage of the entire raft No. X. The Knapp Company alone prosecuted an appeal to the Supreme Court of the state, where, at the February term, 1899, the Appellate Court was affirmed and that company now brings the case to this court.

The pleadings presented several issues of fact, the most important being whether McCaffrey delivered the half raft No. 1 to the Schulenburg Company, when he laid it up in Boston harbor. Every issue of fact has been by the state courts determined in favor of McCaffrey, as appears from the opinion of the Supreme Court of the state: (Printed transcript, pages 245 to 253.)

As stated by plaintiff in error in page 8 of its brief and argument, the sole question for determination in this court is whether or not the United States Courts of Admiralty have exclusive jurisdiction of this suit. Counsel, on page 26 of his brief and argument, contends that the lien of the bailee for hire is a passive lien, being merely the right to retain the possession of the property, and can not be enforced by any proceeding in court, and cites several authorities to support that position. In this case the Supreme Court of the state, in accordance with the weight of American authority, has decided that the lien of the bailee for hire can be enforced in equity, which settles that proposition so far as Illinois is concerned. We are at a loss to know why plaintiff in error makes any such contention here. The proposition presents no federal question.

It is asserted on the part of the Knapp Company that the lien is maritime and jurisdiction to enforce it is exclusively in the Admiralty Courts.

To this we reply :

*First.* The lien for the towage of the raft, if enforceable in admiralty at all, is of the same nature as the lien on cargo for carrying it. It is the common law lien of the bailee for his hire. It is a possessory lien, which, unlike the ordinary maritime lien, is defeated by the delivery of the property to which it attaches.

*Second.* McCaffrey has a lien by virtue of the common law and the maritime law, only in case he has possession. Having this he could enforce either lien, the common law in any court of the State of Illinois

provided with the proper jurisdiction, on the maritime lien by resorting to the Admiralty Court.

*Third.* Not being compelled to resort to the latter, he resorted to the former, and the procedure was strictly *in personam* in a court of common law employing the pleadings and procedure of a chancery court.

*Fifth.* The Knapp Company, having invoked the assistance of the Circuit Court of Mercer County, and having through it obtained the property upon which McCaffrey had a lien, and which was then in his possession, it deprived him of the opportunity of enforcing any lien he might have in the Admiralty Court by a proceeding *in rem*, and this suit thereafter became a mere suit *in personam*, to establish:

*First.* Whether McCaffrey had a lien; and,

*Second.* The amount which this lien secured.

The Knapp Company is therefore estopped from denying the jurisdiction of the said court.

*Sixth.* The facts in the case show grounds of equitable jurisdiction aside from the existence of the lien.

In the foregoing statement we have set forth such facts to supplement those stated by the plaintiff in error as are necessary to a clear understanding of the issues involved. Counsel, both in his statement and argument, makes certain assertions in reference to the facts in this case which we hold to be unwarranted by the record. We have not seen fit to call attention to the testimony which controverts those assertions for the reason that the issues of fact are all settled adversely to plaintiff in error by the opinion of the Supreme Court of the state in this case, to which we

have above referred this court, and we do not deem it necessary to go into the evidence for the purpose of controverting assertions which are at variance with the facts as found by that opinion.

## BRIEF.

### I.

If it be true that the contract for towing this raft of lumber from Stillwater to Boston Bay, Illinois, or St. Louis, Missouri, is a maritime contract, this does not of itself oust the Circuit Court of Mercer County, Illinois, of its jurisdiction to enforce the lien which McCaffrey had upon the raft for towing it as far as he did.

This raft of lumber was in no sense a vessel or vehicle of commerce. At best it was merely a commodity; property which could have been carried on a ship, and conveyed from place to place by water or land. It was cargo. It could not, therefore, be made the subject of such a lien as the maritime law gives upon a vessel in case of contract or of tort. It was not a vessel. It must be treated as cargo, as a commodity carried or conveyed, and whatever lien there may be attached to it was, if the contract was maritime, such a maritime lien as depended upon actual or constructive possession, and could not exist without this.

It can be likened only to the lien which the carrying ship has upon the cargo for freight. This lien, although a right of property, must be in all cases ac-

accompanied by possession. An unconditional delivery absolutely divests the property of its lien. This was so ordained so the merchant would not find his goods incumbered by secret liens of which he might have no knowledge, and which might amount to the full value of the goods long after they had left the decks of the ship.

That there is no maritime lien upon a raft except the same be cargo, or treated as cargo, or its equivalent, has been decided by the following cases:

*Jones v. Coal Barges*, 3 Wal. Jr., 53.

*Tome v. 4 Cribs of Lbr.*, Taney's Dec., 533.

*Gastrell v. Raft*, 2 Woods, 213.

*Raft of Cypress Logs*, 1 Flippin, 593.

In the first three cases the libelants sought to enforce a lien for salvage against the rafts and temporary barges, and in the last libelants sought to recover for services in navigating the raft, and the court refused to entertain jurisdiction, claiming that a raft, although navigated upon navigable water of the United States from a place in one state to a place in another, could not be made the subject of a maritime lien for services rendered in its navigation.

This case is really directly in point, and a stronger case than we find here, for the reason that the propelling of the raft was in that case done by the men who manned, moved and steered it, and were really for the time being navigators rendering services upon navigable water upon a thing capable of carrying them while afloat, and which they were the means of transporting by their labor actually rendered on board.

In the case at bar the raft had no means of propulsion or way of being steered; had no master or crew, nor accommodations for the same, was not intended to carry anything, but was simply a congerie of boards and planks pushed before a steamer, rather than placed upon her decks. It was fit to be transported but not to be a transport.

In the case of *Cope et al. v. Vallette Dry Dock Co.*, 119 U. S., 625, the court held that salvage services rendered to a floating dry dock were not within the jurisdiction of a Court of Admiralty.

It was held in that case and the court says:

"A ship or vessel used for navigation and commerce, though lying at a wharf and temporarily made fast thereto, as well as her furniture and cargo, are maritime subjects and are capable of receiving salvage service."

This would necessarily exclude such property as was not mentioned within this definition.

If the property in question could not be made the subject of a salvage service, so that compensation therefor could be recovered in a Court of Admiralty, then the same property could not be proceeded against for a service of lesser merit, such as towage or labor performed in connection with its transportation or even salvage.

The question, therefore, that this raft was not subject to such a lien as is given by the maritime law upon a vessel, it seems to us is clearly settled by the principles announced in this case and the authorities cited in support of it.



In the case of "*The Kalarama*, 10 Wall., 395, the court defines the liens under the civil and the common law as follows:

"By the civil law a lien upon the ship is given, without any express contract, to those who repair the vessel or furnish her with necessary supplies, whether the vessel was at her home port or abroad when the repairs and supplies were made and furnished. (Dug. 14, 1; 1 Valin Com., 365; 3 Kent Com., 168; W. & B. Adm. Pr., 155.) But the only lien which the common law recognizes in such cases, independent of statutory regulations, is the possessory lien which arises out of and is dependent upon the possession of the ship, as in cases where goods are delivered to an artisan or tradesman to be repaired or manufactured. Such a lien, as understood at common law, did not attach unless the ship was in the possession of the person who set up the claim, and the extent of the privilege which it conferred was that he might retain the ship in his possession until he was paid the money due him for the repairs made and the supplies furnished. Until paid, he might refuse to surrender the ship, but if he relinquished the possession of the ship his lien was displaced and extinguished."

*Westerdell v. Dale*, 7 T. R., 312.

*Justin v. Ballam*, 1 Salk, 34.

*Walkinson v. Bernadiston*, 2 P. Wms., 367.  
3 Kent Com., 169.

*Maule & P. Ship*, 64.

*The Zoulae*, 1 Hagg., Adm., 320.

*Spartali v. Bencke*, 10 C. B., 223.

## II.

WHAT IS THE CHARACTER OF A LIEN UPON A COMMODITY  
TRANSPORTED?

In the case of *Bags of Linseed*, 1 Black., 112, Chief Justice TANEY says:

"Undoubtedly the ship owner has a right to retain the goods until the freight is paid, and has, therefore, a lien upon them for the amount; and, as contracts of affreightment are regarded by the courts of the United States as maritime contracts, over which the Courts of Admiralty have jurisdiction, the ship owner may enforce his lien by a proceeding *in rem* in the proper court. But this lien is not in the nature of a hypothecation, which will remain a charge upon the goods after the ship owner has parted from the possession, but is analogous to the lien given by the common law to the carrier on land, who is not bound to deliver them to the party until his fare is paid; and if he delivers them, the incumbrance of the lien does not follow them in the hands of the owner of consignee. It is nothing more than the right to withhold the goods, and is inseparably associated with his possession, and dependent upon it."

In the case of "*The Eddy*," 5 Wal., 481, Mr. Justice CLIFFORD says:

"Such a lien—that is, the lien of the ship-owner—is not 'the privileged claim' of the civil law, but it arises from the right of the ship owner to retain the possession of the goods until the freight is paid, and therefore it is lost by an unconditional delivery of the goods to the consignee. Subject to this explanation, the maxim that the ship is bound to the merchandise and the merchandise to the ship for the performance of all the obligations created by the contract of affreightment, is the settled rule in all the Federal

courts. (*Dupont v. Vance*, 19 How., 168; 20 U. S., XV., 586.)"

\* \* \* \* \*

"Practice in England is to send such goods as are not required to be landed at any particular dock to a public wharf, and order the wharfinger not to part with them till the freight and other charges are paid; and it is held that in such cases the lien of the master continues, as the goods remain in his constructive possession. (*Ward v. Felton*, 1 East, 512; *Macl. Ship.*, 369; *Chit. de T. Carr.*, 222.)"

The lien of the ship-owner, therefore, is not a maritime lien within the strictest sense of that term, but is a possessory lien which arises out of the performance of a maritime contract. It is identical with the lien of the carrier by land, and the right of possession is the same. The unconditional delivery divests the lien in one case as well as in the other, the difference only being that one arises out of a maritime contract of carriage, while the other arises out of a contract of carriage by land.

Applying the law to the case at bar, we find that the courts are not quick to construe the delivery as an unconditional delivery, because they favor the right of the ship-owner's retaining the actual or constructive possession, so that he may enforce his lien.

In other words, the court favors the lien of the carrier by water, and there are numerous cases in which the courts have construed that a delivery to the consignee with the reservation that the lien was to be preserved, or that a claim was to be preserved, was sufficient to enable the carrier to enforce it notwithstanding the fact that the cargo was in the actual possession

of the consignee at the time proceedings were instituted.

In other words, it must clearly appear that there was an intention to abandon the lien before the courts will consider a delivery absolute and unconditional so as to divest the lien.

*151 Tons of Coal*, 4 Blatch., 368.

*Kimbal v. Annie Kimbal*, 2 Clifford, 15.

*Volunteer*, 1 Sum., 551.

*Certain Logs of Mahogany*, 2 Sum., 589.

*Webb v. Anderson*, Taney, 518.

The Supreme Court and Appellate Courts of Illinois having found that McCaffrey was in possession of the raft up to the time he surrendered it in pursuance of the decree of the Circuit Court of Mercer County, and that he was entitled to recover for towage of the raft a certain sum of money, these questions are not open for further investigation, and the court here must begin from this point and deal with the questions which this state of facts established.

McCaffrey, therefore, having possession, had a right to hold the raft until he was paid for his towage, and the owner of it could at any time obtain the release of it upon payment of the amount due for towage, and not before.

The next question that arises was, How long was McCaffrey to wait before he took steps to recover for the towage services secured by his lien on the raft?

Was he to wait an indefinite period of time, maintaining his possession, perhaps, at large expense and under circumstances of danger from freshets, floods, storms and weather, with a liability for improper care

while the raft was in his custody, or could he resort to some court which would by appropriate legal proceedings enforce his lien, so that he might obtain payment for his towage services—a court before which all parties in interest could be summoned and heard so that any questions of difference which might arise as to the right of possession, as to the lien, and the amount due, if any there was, could be adjudicated; in fact, a court which could determine all possible questions that could arise between all parties that might be interested in the property detained upon which a lien was claimed, or any amount which was sought to be collected by enforcement of the lien.

We contend that the appropriate court in which to enforce this lien was the Circuit Court of Mercer County; at least this court had concurrent jurisdiction with the Admiralty Court to enforce it.

It had such concurrent jurisdiction under our interpretation of the judiciary act of 1789, as well as under the right of possession which was given by the common law to every carrier and every person who had a possessory lien.

McCaftrey was not a common carrier. The lumber was towed under a charter party and subject to its conditions. He used his steamers for no purpose except to perform his contract with the Schulenberg Co.

He was not towing lumber for any one that chose to apply to him.

He was not making a regular business of it between certain points.

He did not solicit the business of towing rafts for any one who chose to have them towed.

Therefore, he was a private carrier.

It may be contended that if the raft in question could be treated as a commodity carried, that McCaffrey had a right to proceed under Chapter 141 of the Revised Statutes of the State of Illinois, which provides as follows:

*Left with common carrier, innkeeper or warehouseman—Notice—Sale.*] Section 1. That whenever any trunk, carpet bag, valise, bundle, package, or article of property, transported or coming into the possession of any railroad or express company, or any other common carrier or innkeeper or warehouseman, or private warehouse keeper, in the course of its or his business as common carrier, innkeeper, warehouseman, or private warehouse keeper, shall remain unclaimed, and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, and the owner or person to whom the same is consigned cannot be found upon diligent inquiry, or, being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier, innkeeper, warehouseman or private warehousekeeper to sell such article at public auction after giving the owner or consignee fifteen days' notice of the time and place of sale, through the post office, and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds of such sale to pay all legal charges on such articles, and the overplus, if any, shall be paid to the owner or consignee upon demand."

Not being a common carrier, McCaffery was not within the terms of this statute.

Moreover this half raft had not arrived at St. Louis, Mo., which was the point to which it had been directed.

If entitled to the possession of the raft until the towage charges were paid, he would have to hold it for an indefinite period of time, unless he could by the authority of some court dispose of it."

By appropriate proceedings in the Circuit Court of Mercer County he attempted to obtain this relief. Both appellate tribunals of the State of Illinois have recognized the jurisdiction of this court, and have sanctioned the proceeding as lawful, regular and within the jurisdiction of the court. This proceeding was one which was open to all parties interested, competent to hear and determine any question that might be raised, with full power to execute any decree or judgment it might make, and therefore in every way a competent tribunal.

The proceeding in this case invaded no rights that any owner or other person interested in the raft might have; it deprived no one of the right to contest every question which might be raised in any court, as to any right of property, lien or interest in the thing or against the parties.

### III.

#### WAS MCCAFFREY COMPELLED TO RESORT TO A COURT OF ADMIRALTY TO ENFORCE HIS LIEN?

It is contended that resort should have been had to an Admiralty Court, and that the right to proceed to enforce the lien that McCaffrey had, such as it was, lay exclusively within the jurisdiction of the Admiralty Court.

Waiving the question of the inconvenience that the suitor might be put to in a case of this kind, we believe the argument entirely fallacious, because the lien which McCaffrey had on the lumber was a possessory lien and one which was guaranteed him by the common law, as much as by the maritime law.

The lien is as old as transportation by land, and older than transportation by water, because it arose in land transportation before there was transportation by water.

Having a lien by virtue of two laws, the common law, and the maritime law, he chose to enforce his lien as a common law lien rather than as a maritime lien, and therefore, proceeded in the state court, rather than in the Admiralty Court, the former being more convenient than the latter.

There was no intrenchment upon the jurisdiction of a Court of Admiralty, as would be the case, had this raft of lumber been a vessel or a vehicle of commerce, which might be made the subject of a lien that would follow her, irrespective of ownership or possession.

In such a case, a lien arises out of rights acquired solely by the maritime law, following the civil law, and not by the common law, and in most instances the lien is given by maritime law, but whether given by maritime law or by some local law, it must be based on a maritime contract and the right to enforce it by proceedings *in rem*, as distinguished from proceedings *in personam*, as observed in common law courts, is one exclusively granted to the Admiralty Courts. It is more a matter of remedy than right.

In this case we seek to enforce a common law lien in a common law court endowed with chancery powers.

We are not attempting to do this by proceedings *in rem*, as employed in a Court of Admiralty, but are employing the process and procedure observed in the court in which the suit was brought. This process and procedure is not *in rem*, but *in personam*.



We are, therefore, not seeking to enforce a maritime right in a common law court, or employing the remedy of an Admiralty Court to enforce a common law right.

So long as we are not violating the provision of the judiciary act, it is immaterial to this court whether the lien which McCaffrey had in this case is enforced by one or another proceeding, so long as the proceeding is one that is not offensive to the Act of Congress giving to Admiralty Courts exclusively the right to proceed *in rem*.

In determining whether an equitable remedy is within this saving clause it is well for us to consider for a moment the object of the exception. It was intended, was it not, to leave the suitor every remedy which he then had by the common law, to allow him to come into Admiralty, if he saw fit, but not to compel him to do so? This being true, why should an equitable remedy be denied him and a remedy on the law side of the docket be allowed him? Such a distinction is without reason and against the spirit of this statute, whose intent no doubt was to save the suitor in every case where he could have a remedy in the local courts, an expensive proceeding in the Admiralty Court, which would probably be remote from the subject-matter of the suit and the parties thereto. Why would Congress leave him the right to proceed on one side of the docket and not on the other? Here is the court, here is the subject matter, and here are the parties. The remedy we have invoked is certainly within the spirit of the saving clause of the federal law. Why should the machinery we have set in motion not do its work?

*Dougan v. Champlain Trans. Co.*, 56 N. Y., 1.

This was an action for damages on account of the death of the plaintiff. The jurisdiction of the state court was questioned and the court in this case says:

"When a right is given, whether by common law or by statute passed after the passage of the Federal Statutes, there must be some remedy when it is withheld, and to enforce it, a common law action will lie wholly irrespective of the foundation of the right, even though Admiralty may also have jurisdiction."

The right of a state court to enforce a possessory lien is upheld by the Supreme Court of Illinois in this case and in the opinion found in the record all of the authorities are collected and commented on, and it is, therefore, unnecessary for us to cite them in this brief.

All of the cases cited by counsel for plaintiff in error, namely,

*The "Moses Taylor,"* 4 Wall., 411,

*The Hine v Trevor*, Id., 555,

*The "Belfast,"* 7 Wall., 625,

"*The Glide*,"

are cases in which proceedings were had under the state statutes which created liens upon the vessels, and these liens could, under these state statutes, be enforced by proceedings strictly *in rem* in which the ship or thing was made the defendant, a proceeding similar to a proceeding *in rem* in the Courts of Admiralty.

In all of these cases the court held that a proceeding *in rem* to enforce a lien was exclusively within the jurisdiction of a Court of Admiralty whenever the foundation of such a lien was a maritime contract.

In the case of *Johnson v. Chicago & P. L. Co.*, 119 U. S., 388, the court held that a proceeding under the statute of Illinois, where the tort was

not a maritime tort, was a valid proceeding and in that case the court say, quoting from the case of *Leon v. Galeoran*, 11 Wall., 185:

“This court held that the action *in personam* in the state court was a proper one, because it was a common law remedy, which the common law was competent to give, although the state law gave a lien on the vessel in a case similar to a lien under the maritime law, and it was made enforceable by a writ of sequestration in advance, to hold the vessel as a security to respond to a judgment, if recovered against her owner as a defendant; that the suit was not a proceeding *in rem*, nor was the writ of sequestration; that the bond given on the release of the vessel became the substitute for her; that the common law is as competent as the admiralty to give a remedy in all cases where the suit is *in personam* against the owner of the property; and that these views were not inconsistent with any expressed in *The Moses Taylor*, in *The Hine v. Trevor*, or in *The Belfast*. The case of *Pennycuik v. Eaton*, 15 Wall., 382, is a similar one.”

And further on in the same opinion, the court say:

“Liens under state statutes, enforceable by attachment in suits *in personam*, are of every day occurrence, and may even extend to liens on vessels, when the proceedings to enforce them do not amount to admiralty proceedings *in rem*, or otherwise conflict with the Constitution of the United States. There is no more valid objection to the attachment proceeding to enforce the lien in a suit *in personam*, by holding the vessel by mesne process to be subjected to execution on the personal judgment when recovered, than there is in subjecting her to seizure on the execution. Both are incidents by a common law remedy, which a court of common law is competent to give.”

The difference between the proceeding *in rem* in admiralty, and the remedy in a court of common law by

auxiliary process of sequestration or attachment has been pointed out in the cases above and the courts have held that this process may be employed for the purpose of reaching the property of the defendant, and that a statute giving such a right is a valid statute, even when the contract which is the foundation of the suit or action is founded on a marine contract.

In this case the proceeding was one authorized by the laws and practice in the courts of State of Illinois and pronounced valid by the highest court of the state, and it matters not to this court what the character of the proceeding was or mode of procedure so long as it was not a proceeding *in rem* as employed by the Admiralty Courts, but was, as stated in the cases above referred to, a proceeding *in personam*, in which the property was held to answer the judgment which might be obtained in the suit.

#### IV.

CAN THE PLAINTIFF IN ERROR NOW QUESTION THE JURISDICTION OF THE COURT AFTER HAVING GIVEN BOND FOR THE RELEASE OF THE RAFT?

The Knapp Co. is in no position to question the jurisdiction of the court. Before it answered it came in by a petition called a cross motion and asked that it be permitted to take the raft "to St. Louis, Mo.," on giving bond in the sum of \$6,000, to pay any lien McCaffrey had, and asserted as a reason therefor "the defendant being in "a court of equity, and believing that it is but right "that this motion be granted, prays the court to "grant the same." That should constitute an estop-

pel. It says our lien is either maritime or passive. We have surrendered the raft under a decree made on the prayer of the Knapp Company. It has passed into the channels of commerce. We can now certainly neither enforce the lien in admiralty, or by holding the raft.

It permitted and asked the court below to take jurisdiction, for the purpose of decreeing to it possession of the property which it took. Can it now be permitted to say, that though chancery had jurisdiction for that purpose, it has not jurisdiction to go on and do complete justice between the parties? What could its averment that it was in a court of equity mean, but that it consented for that court to exercise its jurisdiction? Suppose McCaffrey's bill had been dismissed for want of equity, instead of without prejudice, could he then have come to this court and asked to have that decree reversed on the ground that the Circuit Court of Mercer County had no jurisdiction? We apprehend not. And that is precisely the position assumed by the Knapp Company. It may be said we consented that the decree might be entered. This is true, but we then claimed, and still claim, that the court had the power to enter that decree either with or without consent. The Knapp Company secured the rendition of that decree. It is estopped to assert that the court lacked the power to enter it.

In the case of *Johansen v. Chicago & P. Elevator Co.*, *supra*, the vessel was released upon giving a bond in substantially the same terms as in this case, and the court in that case says:

“From the time of the issuing of the writ of restitution on the same day the petition was filed, the tug

disappears from the proceedings, the bond having taken her place. The judgment was one *in personam* against Johnson & Christy, as required by Section 21 of the statute, in a case where the attached vessel has been discharged from custody. That section also provides that the proceedings subsequent to the judgment, "shall be the same as now provided by law in personal action in the courts of record in this state."

So far, therefore, as this suit is concerned, the action, in the shape in which it comes before this court, is a suit *in personam*, with an attachment as security; the attachment being based on a lien given by the state statute, and a bond having been, by the act of the defendant, substituted for the thing attached."

The suit in this case, like in the case above referred to, is one now strictly *in personam* with the bond, which was voluntarily given to pay any indebtedness or lien that McCaffrey had on the raft, in place of the latter.

*Giudice v. Corrigan*, 129 Ill., 582.

In this case the court uses the following language:

"It is manifest that appellants have voluntarily submitted themselves to the jurisdiction of the state courts, and it is clear that after having done so, by filing a bond provided by the statute for the release of the vessel, the proceeding was no longer *in rem*, but necessarily *in personam*, and no other than a personal judgment could have been rendered."

It never was a proceeding *in rem*, and the *res* which was retained under McCaffrey's lien was released upon application of the plaintiff in error. They voluntarily substituted a bond in place of the *res*, and then take up the contest as to whether there was anything due to McCaffrey.

They cannot, therefore, at this time, question the

jurisdiction of the court into which they voluntarily came, to the jurisdiction of which they submitted themselves, and in which they gave bond under which they assumed certain obligations which we are now simply asking them to carry out.

The decision of the Supreme Court of Illinois is therefore without error and should be sustained.

C. E. KREMER,

GUY C. SCOTT,

*For Defendant in Error.*

March, 1900.

## Statement of the Case.

KNAPP, STOUT & CO. COMPANY *v.* McCaffrey.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 263. Submitted April 24, 1900.—Decided May 14, 1900.

A bill in equity in a state court to foreclose a common law lien upon a raft for towage services, is not an invasion of the exclusive admiralty jurisdiction of the District Courts, but is a proceeding to enforce a common law remedy and within the saving clause of section 563 of a remedy which the common law is competent to give.

This was a bill in equity filed in the Circuit Court for the county of Mercer, Illinois, by the defendant in error, John McCaffrey, against the Knapp, Stout & Co. Company, (hereinafter called the Knapp Company,) and the Schulenburg & Boeckler Lumber Company, (hereinafter called the Schulenburg Company,) and its assignees, to enforce a lien for towage upon a half raft of lumber then lying at Boston Bay, in Mercer County.

The suit arose from a contract made April 6, 1893, by McCaffrey with the Schulenburg Company, in which, after reciting that McCaffrey had purchased of this company three steam tow boats for the sum of \$17,500, it was agreed that McCaffrey was to tow all the rafted lumber such company would furnish him at or below their mill at Stillwater, Minnesota, to St. Louis, and deliver the same there to the company in quantities not exceeding one half a raft at a time, for which service he was to be paid \$1.12½ per thousand feet, board measure, for the lumber contained in the raft. The other provisions of the contract, of which there were many, were not material to the present controversy. After towing a number of rafts for the company, the charges for which remained unpaid, one of McCaffrey's steamers, known as the Robert Dodds, left Stillwater, October 13, 1894, with raft No. 10 of that year. The river being low and navigation difficult, McCaffrey was instructed to divide the raft, to bring one half to St. Louis, and to lay up the other half in some safe harbor. In compliance with these instruc-



## Counsel for Parties.

tions McCaffrey divided the raft on October 20 at Boston Bay harbor in Mercer County, leaving one half there, while the other half was towed to St. Louis and delivered to the lumber company on November 2. The company paid the clerk of the boat \$1250 without directions as to its application, and McCaffrey applied it on the amount due him for the towage of other rafts. The steamer returned to Boston Bay the morning of November 4, and laid up outside the raft for the winter.

On the next day, November 5, the Schulenburg Company sold the half raft in Boston Bay to the Knapp Company for \$15,000, part in cash and the remainder in a note due in four months, which was paid at maturity. A bill of sale was given for the lumber, and a letter written to the watchman in charge of the raft informing him of the sale. On November 9 the Schulenburg Company made a voluntary assignment in St. Louis for the benefit of creditors. McCaffrey, hearing of the assignment, offered both companies to tow the half raft to St. Louis under his contract, but the Knapp Company informed him that they did not wish him to do so, saying that they did their own towing; whereupon McCaffrey, claiming to be still in possession of the half raft and believing that the company was about to take it from him by force, filed this bill to foreclose his lien for towage. The Knapp Company gave a bond for the amount of the claim and took the raft away.

The case came on for hearing in the Circuit Court upon pleadings and proofs, and resulted in a decree dismissing the bill without prejudice. McCaffrey appealed to the appellate court, which reversed the decree of the Circuit Court, and remanded the cause with directions to enter a decree for the sum of \$3643.17, with interest thereon. The Knapp Company appealed to the Supreme Court of the State, which affirmed the judgment of the appellate court, (178 Ill. 107); whereupon defendant sued out a writ of error from this court.

*Mr. Charles P. Wise* for plaintiff in error.

*Mr. Charles E. Kremer* and *Mr. Guy C. Scott* for defendant in error.

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MR. JUSTICE BROWN, after making the above statement, delivered the opinion of the court.

Defendants set up in their answers and insisted, both before the appellate court and the Supreme Court of Illinois, that, if plaintiff had any lien upon the raft at all for his towage services, it was a maritime lien, enforceable only in the District Court of the United States as a court of admiralty. This is the only Federal question presented in the case.

By article three, section two, of the Constitution, the judicial power of the general government is declared to extend to "all cases of maritime and admiralty jurisdiction;" and, by section nine of the original judiciary act of September 24, 1789, c. 20, 1 Stat. 73, 76, it was enacted "that the District Courts shall have, exclusively of the courts of the several States, . . . exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." This language is substantially repeated in subdivision eight of Rev. Stat. § 563, wherein it is expressly stated that "such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the Circuit Courts."

The scope of the admiralty jurisdiction under these clauses was considered in a number of cases, arising not long after the District Courts were established, notably so in that of *De Loria v. Boit*, 2 Gall. 398, wherein Mr. Justice Story brought his great learning to bear upon an exhaustive examination of all the prior authorities upon the subject both in England and in America.

But the exclusive character of that jurisdiction was never called to the attention of this court until 1866, when the States had begun to enact statutes giving liens upon vessels for causes of action cognizable in admiralty, and authorizing suits *in rem* in the state courts for their enforcement. The validity of these laws had been expressly adjudicated in a number of cases in Ohio, Alabama and California. The earliest case arising in this court was that of *The Moses Taylor*, 4 Wall. 411, in which was considered a statute of California creating a lien for the breach

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of any contract for the transportation of persons or property, and also providing that actions for such demands might be brought directly against the vessel. The act further provided that the complaint should designate the vessel by name; that the summons should be served upon the master, or person in charge, the vessel attached, and, in case of judgment recovered by the plaintiff, sold by the sheriff. An action having been brought by a passenger before a justice of the peace of the city of San Francisco for failure to furnish him with proper and necessary food, water and berths, the defence was interposed that the cause of action was one of which the courts of admiralty had exclusive jurisdiction. The case finally reached this court, where the defence was sustained, the court holding that the contract for the transportation of the plaintiff was a maritime contract; that the action against the steamer by name, authorized by the statute of California, was a proceeding in the nature and with the incidents of a suit in admiralty. Upon this point Mr. Justice Field observed: "The distinguishing and characteristic feature of such suit is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly. It is this dominion of the suit in admiralty over the vessel or thing itself which gives to the title made under its decrees validity against all the world. By the common law process, whether of mesne attachment or execution, property is reached only through a personal defendant, and then only to the extent of his title. Under a sale, therefore, upon a judgment in a common law proceeding, the title acquired can never be better than that possessed by the personal defendant. It is his title, and not the property itself, which is sold." The court also held that the statute of California to the extent to which it authorized actions *in rem* against vessels for causes of action cognizable in admiralty, invested her courts with admiralty jurisdiction, and to that extent was void.

At the same term arose the case of *The Hine v. Trevor*, 4 Wall. 555, in which a statute of Iowa giving a lien for injuries to persons or property, and providing a remedy *in rem* against the vessel, was held to be obnoxious to the exclusive jurisdiction

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of the Federal courts. Speaking of the common law remedy, saved by the statute, Mr. Justice Miller observed: "But the remedy pursued in the Iowa courts in the case before us, is in no sense a common law remedy. It is a remedy partaking of all the essential features of an admiralty proceeding *in rem*. The statute provides that the vessel may be sued and made defendant without proceeding against the owners or even mentioning their names. That a writ may be issued and the vessel seized, on filing a petition similar in substance to a libel. That after a notice in the nature of a monition, the vessel may be condemned and an order made for her sale, if the liability is established for which she was sued. Such is the general character of the steamboat laws of the Western States." The same principle was applied in the case of *The Belfast*, 7 Wall. 624, to a statute of Alabama under which contracts of affreightment were authorized to be enforced *in rem* in the state courts by proceedings the same in form as those used in the courts of admiralty. This was also held to be unconstitutional.

The principle of these cases was restated in *The Lottawanna*, 21 Wall. 558, 579, although the question settled by that case was that materialmen furnishing repairs and supplies to a vessel in her home port do not acquire thereby a lien upon the vessel by the general maritime law. To the same effect is *The J. E. Rumbell*, 148 U. S. 1, in which a lien by a state law for such repairs and supplies was given precedence of a prior mortgage. Finally, in the case of *The Glide*, 167 U. S. 606, it was held that the enforcement of such a lien upon a vessel, created by a statute of Massachusetts, for repairs and supplies in her home port, for which a remedy *in personam* may be had in admiralty, was exclusively within the admiralty jurisdiction of the courts of the United States, and that the statute of Massachusetts, to the extent that it provided for a proceeding *in rem*, and for a sale of the vessel, was unconstitutional and void. See also *Moran v. Sturges*, 154 U. S. 256.

The rule to be deduced from these cases, so far as they are pertinent to the one under consideration, is this: That wherever any lien is given by a state statute for a cause of action cognizable in admiralty, either *in rem* or *in personam*, proceedings

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*in rem* to enforce such lien are within the exclusive jurisdiction of the admiralty courts.

But the converse of this proposition is equally true, that if a lien upon a vessel be created for a claim over which a court of admiralty has no jurisdiction in any form, such lien may be enforced in the courts of the State. Thus, as the admiralty jurisdiction does not extend to a contract for building a vessel, or to work done or materials furnished in its construction, *The Jefferson*, (*People's Ferry Co. v. Beers*), 20 How. 393; *The Capitol*, (*Roach v. Chapman*), 22 How. 129, we held in *Edwards v. Elliott*, 21 Wall. 532, that, in respect to such contracts, it was competent for the States to enact such laws as their legislatures might deem just and expedient, and to provide for their enforcement *in rem*. The same principle was applied in *Johnson v. Chicago &c. Elevator Co.*, 119 U. S. 388, to a statute of Illinois giving a lien upon a vessel for damage done to a building abutting on the water, upon the ground that the court had previously held that there was no jurisdiction in admiralty for damage done by a ship to a structure affixed to the land. *The Plymouth*, 3 Wall. 20; *Ex parte Phoenix Ins. Co.*, 118 U. S. 610. There was really another sound reason for the decision in the fact that the suit was *in personam*, with an attachment given upon the property of the defendant, which, as we shall see hereafter, is quite a different case from a proceeding *in rem*.

To establish the proposition that the proceeding in this case was an invasion of the exclusive jurisdiction of the admiralty courts defendants are bound to show, first, that the contract to tow a raft is a maritime contract; second, that the proceeding taken was a suit *in rem* within the cases above cited, and not within the exception of a common law remedy, which section 563 was never designed to forestall.

The first of these conditions may be readily admitted. That a contract to tow another vessel is a maritime contract is too clear for argument, and there is no distinction in principle between a vessel and a raft. Whether the performance of such a contract gives rise to a lien upon the raft for the towage bill admits of more doubt; indeed, the authorities, as to how far a raft is within the jurisdiction of admiralty, are in hopeless con-

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fusion, but for the purposes of this case we may admit that such lien exists. But, if existing, it would not oust or supplant the common law lien dependent upon possession.

The real question is whether the proceeding taken is within the exception "of saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it." It was certainly not a common law action, but a suit in equity. But it will be noticed that the reservation is not of an *action* at common law, but of a common law *remedy*; and a remedy does not necessarily imply an action. A remedy is defined by Bouvier as "the means employed to enforce a right, or redress an injury." While, as stated by him, remedies for non-fulfillment of contracts are generally by action, they are by no means universally so. Thus, a landlord has at common law a remedy by distress for his rent—a right also given to him for the purpose of exacting compensation for damages resulting from the trespass of cattle. A bailee of property has a remedy for work done upon such property, or for expenses incurred in keeping it, by detention of possession. An innkeeper has a similar remedy upon the goods of his guests to the amount of his charges for their entertainment; and a carrier has a like lien upon the thing carried. There is also a common law remedy for nuisances by abatement; a right upon the part of a person assaulted to resist the assailant, even to his death; a right of recaption of goods stolen or unlawfully taken, and a public right against disturbers of the peace by compelling them to give sureties for their good behavior. All these remedies are independent of an action.

Some of the cases already cited recognize the distinction between a common law action and a common law remedy. Thus in *The Moses Taylor*, 4 Wall. 411, 431, it is said of the saving clause of the judiciary act: "It is not a remedy in the common law courts which is saved, but a common law remedy." To same effect is *Moran v. Sturges*, 154 U. S. 256, 276.

In the case under consideration the remedy chosen by the plaintiff was the detention of the raft for his towage charges. That a carrier has a lien for his charges upon the thing carried, and may retain possession of such thing until such charges are

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paid, is too clear for argument. We know of no reason why this principle is not applicable to property towed as well as to property carried. While the duties of a tug to its tow are not the duties of a common carrier, it would seem that his remedy for his charges is the same, provided that the property towed be of a nature admitting of the retention of possession by the owner of the tug. But whatever might be our own opinion upon the subject, the Supreme Court of Illinois, having held that under the laws of that State the plaintiff had a possessory lien upon this raft, that such lien extended to so much of the raft as was retained in his possession, for the entire bill, and that under the facts of this case plaintiff did have possession of the half raft until he surrendered it under order of the court for its release upon bond given, we should defer to the opinion of that court in these particulars, as they are local questions dependent upon the law of the particular State.

Whether a bill in equity will lie to enforce a possessory lien may admit of some doubt, and the authorities are by no means harmonious. That a person having a lien upon chattels has no right himself to sell such chattels in the discharge of his lien, is well settled. *Doane v. Russell*, 3 Gray, 382; *Jones v. Pearle*, 1 Strange, 557; *Lickbarrow v. Mason*, 6 East, 21; *Briggs v. Boston and Lowell Railroad*, 6 Allen, 246; *Indianapolis & St. Louis Railroad v. Herndon*, 81 Ill. 143; *Hunt v. Haskell*, 24 Me. 339; and in the case of the *Thames Iron Works &c. Co. v. Patent Derrick Co.*, 1 J. & H. 93, it was held by Vice Chancellor Wood that ship builders, having a lien upon the ship built by them according to the contract for the purchase money, could not enforce their lien by sale. But in some jurisdictions, and notably so in Illinois, it is held that liens for the enforcement of which there is no special statutory provision, are enforceable in equity. *Black v. Brennan*, 5 Dana, 310; *Charter v. Stevens*, 3 Denio, 33; *Dupuy v. Gibson*, 36 Ill. 197; *Cushman v. Hayes*, 46 Ill. 145; *Cairo & Vincennes Railroad v. Fackney*, 78 Ill. 116; *Barchard v. Kohn*, 157 Ill. 579. Such being the practice in Illinois, we recognize it as expressive of the local law. There were circumstances in this case which appealed with peculiar force to the discretion of a court of equity. The

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defendant disputed McCaffrey's lien and right of possession to the raft, and announced its intention of towing it to St. Louis itself. It was in a position where it might have been taken away by a superior force, unless the plaintiff incurred the expense of employing a gang of men to watch it. Under such circumstances it was not only natural but just that he should have applied to a court of equity for relief in the enforcement of his common law remedy.

We have held in several cases that analogous proceedings were no infringement upon the exclusive admiralty jurisdiction of the Federal courts. Thus, in *Leon v. Galcean*, 11 Wall. 185, three sailors brought suits in a state court against the owner of a schooner to recover their wages, and had the schooner, which was subject to a lien or privilege in their favor, according to the laws of Louisiana, similar in some respects to the principles of the maritime law, sequestered by the sheriff of the parish. The writ was levied upon the schooner, which was afterwards released upon a forthcoming bond. This was held to be an ordinary suit *in personam* with an auxiliary attachment of the property of the defendant, and no infringement upon the admiralty jurisdiction. Said Mr. Justice Clifford: "They brought their suits in the state courts against the owner of the schooner, as they had a right to do, and, having obtained judgment against the defendant, they might levy their execution upon any property belonging to him, not exempted from taxes or execution, which was situated in that jurisdiction."

In *Steamboat Co. v. Chase*, 16 Wall. 522, a steamboat owned by the company ran over a sail boat containing the plaintiff's intestate, and killed him. His administrator brought suit against the company in a state court of Rhode Island, under an act making common carriers responsible for deaths occasioned by their negligence, and providing that the damages be recovered in an action on the case. Defendant took the position that the saving clause must be limited to such causes of action as were known to the common law at the time of the passage of the judiciary act, and as the common law gave no remedy for negligence resulting in death, an action subsequently given by the statute was not a common law remedy. The contention was



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held to be unsound. So, also, in *Schoonmaker v. Gilmore*, 102 U. S. 118, it was held that courts of admiralty had no exclusive jurisdiction of suits *in personam* growing out of collisions.

In the case already cited of *Johnson v. Chicago &c. Elevator Co.*, 119 U. S. 388, a petition was filed by the elevator company against the owner of a tugboat for injuries done by the jib boom of a schooner in tow of the tug to the wall of plaintiff's warehouse. The petition prayed for a writ of attachment against the defendant, commanding the sheriff to attach the tug, summon the defendant to appear, and for a decree subjecting the tug to a lien for such damages. The statute under which the proceedings were instituted gave a lien for all damages arising from injuries done to persons or property by such water craft. It was held that the damage having been done upon the land, there was no jurisdiction in admiralty, and that the suit was *in personam* with an attachment as security, the attachment being based upon a lien given by the state statute. Said the court: "There being no lien on the tug by the maritime law for the injury on land inflicted in this case, the State could create such a lien therefor as it deemed expedient, and could enact reasonable rules for its enforcement, not amounting to a regulation of commerce." It would seem that even if the suit had been *in rem* against the vessel, it would have been sustained, as the injury was not one for which an action would have lain in admiralty.

In the case under consideration the suit was clearly one *in personam* to enforce a common law remedy. It was no more a suit *in rem* than the ordinary foreclosure of a mortgage. The bill prayed for process against the several defendants; that they be required to answer the bill; that plaintiff be decreed to have a first lien upon the raft for the amount due him; that the defendants be decreed to pay such amount; that in default of such payment the raft be sold to satisfy the same; and, that in case of such sale, the purchaser have an absolute title, free from all equity of redemption and all claims of the defendants, and that they be debarred, etc. This is the ordinary prayer of a foreclosure bill. The decree of the appellate court reversed that of the Circuit Court, and directed a recovery of a specified

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amount. It resembles a decree *in rem* only in the fact that the property covered by the lien was ordered to be sold. Such sale, however, would pass the property subject to prior liens, while a sale *in rem* in admiralty is a complete divestiture of such liens, and carries a free and unincumbered title to the property, the holders of such liens being remitted to the funds in the registry which are substituted for the vessel. *The Helena*, 4 Rob. Ad. 3.

The true distinction between such proceedings as are and such as are not invasions of the exclusive admiralty jurisdiction is this: If the cause of action be one cognizable in admiralty, and the suit be *in rem* against the thing itself, though a monition be also issued to the owner, the proceeding is essentially one in admiralty. If, upon the other hand, the cause of action be not one of which a court of admiralty has jurisdiction, or if the suit be *in personam* against an individual defendant, with an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law, and within the saving clause of the statute (sec. 563) of a common law remedy. The suit in this case being one in equity to enforce a common law remedy, the state courts were correct in assuming jurisdiction.

The decree of the Supreme Court of Illinois is, therefore,

*Affirmed.*